APPENDIX A

SUPREME COURT OF UTAH

No. 20020683

HENTSCH HENCHOZ & CIE,
Plaintiff and Appellee,

v.

PHILIPPE D. DAVID GUBBAY; CAPITAL SUISSE, S.A.; CAPITAL SUISSE SECURITIES, INC.; CAPITAL SUISSE, INC.; ZOOLEY SERVICES LIMITED; ZOOLEY OF UTAH, INC.; FERNLAND LIMITED; DOUGLAS P. HOYT; and JOHN DOES 1-10,
Defendants and Appellants.

Aug. 6, 2004

DURRANT, *Justice*:

Appellants contest the district court's denial of their motion to dismiss, arguing that venue is not proper in Utah due to a forum selection clause that provides for all actions to be brought in the British Virgin Islands. In light of appellants' wilful defiance of the district court's orders below, we refuse to consider the merits of the appeal at this time. Instead, we will stay the appeal in order to allow appellants time in which to comply with our instructions as outlined in this opinion. If appellants fail to comply, the appeal will be dismissed.

BACKGROUND

The events giving rise to this litigation began in late 2000 when appellee Hentsch Henchoz & Cie ("HH & C"), a Swiss banking institution with offices around the world, was approached about a purported investment opportunity. HH & C was contacted by Philippe D. David Gubbay ("Gubbay"), the

"Managing Director, CEO and President" of the "Capital Suisse Group of Companies," an organization that allegedly operated a highly successful "Mutual Fund for the Professional Investor."

The Capital Suisse Group of Companies, purportedly "a worldwide financial services corporation," included the following entities: Capital Suisse, S.A. ("the Fund"), which was incorporated in the British Virgin Islands and had offices in Marbella, Spain; Capital Suisse, Inc., a Utah corporation, which had its principal place of business in Salt Lake City and was the purported administrator and registrar of the Fund; Capital Suisse Securities, Inc., the principal custodian of the Fund with its principal place of business in San Rafael, California; Zooley Services Ltd., a West Indies corporation and professed investment adviser for the Fund; Zooley of Utah, Inc., a Utah corporation that allegedly provided financial services for Zooley Services; and Fernland Ltd., a West Indies corporation and, ostensibly, the sole director of the Fund. Gubbay corresponded on behalf of the Fund as a director of Fernland. (Gubbay and the Capital Suisse Group of Companies will be collectively referred to herein as "Capital Suisse.") Capital Suisse, Inc., and Zooley of Utah, Inc. maintained bank accounts at Wells Fargo Bank and Zions First National Bank in Salt Lake City, Utah.

In November of 2000, Gubbay provided HH & C with a confidential prospectus along with other materials that portrayed the Fund as being very successful and highly profitable. Relying on these and other representations, HH & C wired a total of nearly $25 million to Capital Suisse. Each of HH & C's seven wire transfers was accompanied by a "Subscription Agreement" that purported to set forth the number of shares purchased by HH & C. In addition, each Subscription Agreement contained a forum selection clause, providing that any legal proceedings against the Fund would be brought only in the British Virgin Islands.

Throughout the first quarter of 2001, the Capital Suisse website represented that the Fund was steadily gaining in value. However, after a routine internal review, HH & C became suspicious. Beginning in April 2001, HH & C began a series of attempts to redeem its shares. In the course of these unsuccessful attempts, HH & C discovered that Gubbay was a convicted embezzler and had been sentenced to a term of imprisonment and to deportation from Switzerland for seven years. HH & C also learned of, and subsequently participated in, an ongoing criminal proceeding against Capital Suisse brought by another defrauded investor in Marbella, Spain. In defending against HH & C's claims before the Spanish court, Capital Suisse asserted that jurisdiction was not proper in Spain because HH & C did not have commercial relations with Capital Suisse in Spain, but only with Capital Suisse, Inc., located in Salt Lake City, Utah. At the conclusion of the Spanish proceeding, the Spanish Criminal Court issued an order freezing the Capital Suisse accounts at Wells Fargo Bank and Zions First National Bank in Salt Lake City, Utah (the "Spanish Order").

On June 21, 2001, HH & C filed a petition in Utah's Third District Court to enforce the Spanish Order. The district court scheduled an evidentiary hearing, and HH & C began serving subpoenas on the banks. Capital Suisse moved to quash the subpoenas or, alternatively, for a protective order preventing disclosure to third parties of any information gained from the bank accounts. Capital Suisse also filed a motion in limine, seeking to exclude any evidence relating to the bank records at the scheduled evidentiary hearing. On July 27, 2001, in its order on the motion to quash, the district court determined that HH & C was entitled to review the bank account balances for the dates of June 26th and July 25th pending the evidentiary hearing. Upon reviewing the account balances

pursuant to the district court's order, HH & C learned that the accounts had been severely depleted.[1]

In the face of the dissipation of the bank accounts, and Capital Suisse's refusal to comply with HH & C's document requests, HH & C filed a verified complaint in the district court on August 2, 2001, asserting claims for fraud, civil conspiracy, breach of fiduciary duty, breach of contract, and conversion.[2] At that time, HH & C also filed a motion seeking a temporary restraining order and prejudgment writ of attachment of the bank accounts, in addition to a motion for expedited discovery with interrogatories and document requests to Capital Suisse and subpoenas to Zions and Wells Fargo. At a hearing on the motions, the district court questioned counsel for Capital Suisse as to the marked depletion in the bank accounts. Finding counsel's answers unsatisfactory, the court ordered counsel to be prepared the following week to disclose what had happened to the funds.[3] The court then granted HH & C's motions and entered a temporary restraining order freezing the Zions and Wells Fargo accounts.

On August 15, 2001, Capital Suisse requested a stay pending interlocutory appeal of the order granting expedited discovery.[4] Capital Suisse also filed a motion to dismiss based on lack of jurisdiction and improper venue due, in part, to the existence of the forum selection clause contained in the Sub-

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[1] For instance, the Zions account had gone from a balance of $2,207,006.94 on June 26th to a balance of $804,468.31 on July 25th.

[2] This action was later consolidated with the original petition to enforce the Spanish Order.

[3] Although counsel agreed to do so, it does not appear that Capital Suisse ever complied with this request.

[4] Specifically, Capital Suisse sought to stay any discovery of the bank accounts prior to "dispositive motions to dismiss being heard in [the] matter." We denied Capital Suisse's petition for interlocutory appeal on this matter on October 2, 2001.

scription Agreements. In a minute entry dated October 11, 2001, the district court denied Capital Suisse's motion to dismiss. The court determined that, since the forum selection clause was unfair and the entire agreement was pervaded by fraud, the forum selection clause could be disregarded. It is this ruling that is the subject of this appeal.

The district court denied Capital Suisse's subsequent motion to stay the litigation pending interlocutory appeal of the denial of the motion to dismiss[5] and ordered Capital Suisse to comply with HH & C's outstanding discovery requests, which it noted had been outstanding for "some time." In response, Capital Suisse invoked the Fifth Amendment privilege against self-incrimination and otherwise refused to answer. Capital Suisse's privilege claim was also denied by the district court, and the court again ordered Capital Suisse to answer the interrogatories and ordered all of the Capital Suisse defendants to answer the complaint. Capital Suisse filed an answer to the verified complaint on February 28, 2002.

At some point during the course of this litigation, in defiance of the district court's orders requiring Capital Suisse to comply with HH & C's discovery requests, Capital Suisse shipped all of its documents, records, and computer hard drives from Utah to Spain. Upon discovering that the documents and other items were no longer in Utah, the district court ordered their return. Soon thereafter on April 1, 2002, Capital Suisse filed a notice of withdrawal of answer, stating that it "refuse[d] to acknowledge [the] litigation any further" because, pursuant to the forum selection clause in the parties' agreement, jurisdiction was only proper in the British Virgin Islands. Capital Suisse's counsel also filed a motion to withdraw, indicating that Capital Suisse "do[es] not recognize the

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[5] This court denied interlocutory review by an order dated January 3, 2002.

jurisdiction of the United States over the dispute." Counsel also stated that "as officers of the [c]ourt" they had been placed in a "conflict of interest situation" in light of the outstanding orders of the district court and Capital Suisse's "refus[al] to comply or otherwise participate any further in th[e] action."

HH & C then moved for summary judgment on three of its claims, which was unopposed by Capital Suisse. The district court granted the motion, concluding that Capital Suisse had defrauded HH & C "by acting in concert to create the appearance of a legitimate investment opportunity" that was "nothing more than a ruse to defraud innocent investors." The court entered judgment against Capital Suisse in the amount of $24,730,000 plus interest. Capital Suisse filed this appeal on August 15, 2002, contesting only the district court's denial of its motion to dismiss based on the forum selection clause. We have jurisdiction pursuant to Utah Code section 78-2-2(3)(j) (2002).

ANALYSIS

In its argument on appeal, HH & C urges this court to dismiss Capital Suisse's appeal without considering the merits because Capital Suisse has "repeatedly and willfully disobeyed [the district court's] orders . . . , destroyed evidence, and refused to recognize the jurisdiction of the Utah courts." To date, this court has not addressed whether it may dismiss a civil appeal when the appellant disobeys the orders of the district court in the same action. The Utah Court of Appeals, however, has discussed its authority to dismiss appeals from contemptuous appellants on several occasions. In *D'Aston v. D'Aston*, 790 P.2d 590 (Utah Ct.App.1990), the first Utah case to address the issue, the appellant challenged a divorce decree entered by the trial court. *Id.* at 591. The court of appeals determined that it could dismiss the appeal because the appellant had failed to pay the amount due her former husband, had failed to post an ordered supersedeas bond, and

had been adjudged in contempt by the trial court after "purposefully hiding herself from the jurisdiction of the [c]ourt and from service." *Id.* at 592-93.

In examining the procedures for dismissal followed by other jurisdictions, the court of appeals noted that there are at least three ways that an appellate court can deal with a contumacious party: (1) the court can dismiss the appeal without allowing the party an opportunity to bring itself into compliance with the trial court's order; (2) the court can allow the party a fixed time to comply with the trial court's order before dismissing the appeal; or (3) the court may, in its discretion, fashion a remedy that is appropriate to the facts and circumstances of the particular case. *Id.* at 593-94 (listing cases); *see also Von Hake v. Thomas*, 881, P.2d 895, 897-98 (Utah Ct.App.1994) ("*Von Hake II*") (discussing *D'Aston*). In deciding to allow the appellant in *D'Aston* thirty days to "bring herself within the process of the trial court" before her appeal would be dismissed, the court of appeals emphasized that its approach did not deny the appellant her constitutional right to appeal under *article VIII, section 5 of the Utah Constitution*. *Id.* at 594-95. Rather, the court merely "insist[ed] [that] she . . . submit herself to the jurisdiction of the trial court and satisfy that court's concerns before she [would be allowed to] exercise that right." *Id.*

Similarly, in *Von Hake v. Thomas*, 858 P.2d 193 (Utah Ct. App.1993) ("*Von Hake I*"), the court of appeals dismissed the appeal of a litigant who had been adjudged in contempt by the trial court for failure to comply with discovery orders and the use of "improper and dilatory tactics to frustrate [trial court] orders and to avoid appearing in court." *Id.* at 193-94. The court determined that because the appellant was currently serving a five-year term of imprisonment in California for tax fraud, "a provisional dismissal, conditioned upon [his] failure to physically present himself to the trial court within thirty days, would be an exercise in futility." *Id.* at 197. Therefore,

the court "dispense[d] with the formality of a thirty-day grace period" and dismissed the appeal outright. *Id.*

On remand from this court, the court of appeals revisited the necessity of a grace period and concluded that *D'Aston* did not require a mandatory grace period before dismissal, but rather that "*D'Aston* affirm[ed] the court's discretionary authority to dismiss the appeals of contumacious litigants under terms which are fair and just given the circumstances of a particular case." *Von Hake II*, 881 P.2d at 897-98. Therefore, the court again held that the appeal should be dismissed outright, but noted that the dismissal was "without prejudice, subject to reinstatement on reasonable terms and conditions" specified by the court. *Id.* at 898; *see also Cummings v. Cummings*, 1999 UT App 356, ¶ 11, 993, P.2d 248 (holding that because appellant had been adjudged in contempt and his defiance of court orders had led to the dissipation of the marital assets, the court could, in its discretion, dismiss the appeal and "condition reinstatement of th[e] appeal upon appellant's submission to th[e] court of proof that he ha[d] satisfied the judgments held by appellee").

In light of these cases and myriad authorities from other jurisdictions,[6] we conclude that this court, in its discretion, may dismiss the appeals of appellants who have wilfully disobeyed an order of a lower court in the same action. We agree with the approach adopted by the court of appeals that allows the reviewing appellate court to exercise its discretionary authority by fashioning a remedy that is fair and just under the circumstances, taking into account the facts of

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[6] *See, e.g., Stewart v. Stewart*, 91 Ariz. 356, 372 P.2d 697 (1962); *Alioto Fish Co., Ltd. v. Alioto*, 27 Cal.App.4th 1669, 34 Cal.Rptr.2d 244 (1994); *Tobin v. Casaus*, 128 Cal.App.2d 588, 275 P.2d 792 (1954); *Schmidt v. Schmidt*, 610 A.2d 1374 (Del.1992); *Keidaish v. Smith*, 400 So.2d 90 (Fla.Dist.Ct. App.1981); *Prevenas v. Prevenas*, 193 Neb. 399, 227 N.W.2d 29 (1975); *DeMauro v. DeMauro*, 147 N.H. 478, 794 A.2d 112 (2002); *Hopp v. James*, 470 S.W.2d 716 (Tex.Civ.App. 1971).

the particular case. Such authority is indispensable since it would "violate[ ] the principles of justice to allow a party who flaunts the orders of the courts to seek judicial assistance" on appeal. *D'Aston*, 790 P.2d at 593 (citing *Stewart v. Stewart*, 91 Ariz. 356, 372 P.2d 697, 700 (1962); *Rude v. Rude*, 153 Cal.App.2d 243, 314 P.2d 226, 230 (1957); *Greenwood v. Greenwood*, 191 Conn. 309, 464 A.2d 771, 773 (1983); *Strange v. Strange*, 464 S.W.24 216, 219 (Tex.Civ.App.1970) (per curiam)).

Additionally, although in the court of appeals' cases discussed above the appellants had been formally cited for contempt, we conclude that dismissal of appeals from disobedient parties does not require a formal finding of contempt. In so concluding, we join with those jurisdictions that maintain that "[t]he principle permitting [a] court to stay or dismiss an appeal does not require a formal judgment of civil contempt. It is based upon fundamental equity and is not to be frustrated by technicalities, such as the absence of a formal citation and judgment of contempt." *Alioto Fish Co., Ltd. v. Alioto*, 27 Cal.App.4th 1669, 34 Cal.Rptr.2d 244, 251 (1994) (quotations omitted) (finding that appellant's "wilful disobedience [and] obstructive tactics" were sufficient to warrant dismissal of the appeal (quotations omitted)); *see also Stewart*, 372 P.2d at 699-700 (noting that a number of jurisdictions allow appellate discretion to dismiss for violations of trial court orders "whether or not the disobedient appellants have been formally adjudicated in contempt of court"); *Keidaish v. Smith*, 400 So.2d 90, 91 (Fla. Dist. Ct. App. 1981) dismissing appeal even where there was no formal finding of contempt because appellant had violated temporary injunction by transferring valuable property and money to various parties and had fled the jurisdiction).

In the present case, Capital Suisse's defiance of district court orders is clearly sufficient to warrant dismissal of the appeal. Though not formally adjudged in contempt, Capital

Suisse's wilful disobedience would certainly have been adequate to support an order of contempt had Capital Suisse not absented itself from the litigation. Capital Suisse repeatedly refused to comply with discovery requests from HH & C and went to extreme lengths to prevent access to the Zions and Wells Fargo bank accounts. Upon being ordered by the district court to comply with discovery, Capital Suisse shipped all of its documents, records, and computer hard drives from Utah to Spain. On the heels of this insubordination, upon being ordered to return the awol documents and other evidence, Capital Suisse abruptly withdrew from the litigation, claiming that the district court had no jurisdiction over it.

Capital Suisse argues that it did not wilfully disobey court orders, but that it "simply declined to participate substantively in the proceedings" after the district court denied its motion to dismiss for lack of venue, at which point it was "convinced that the [district] court had abused its discretion by wrongly concluding that venue was proper in Utah." We emphasize, however, that "[t]he processes of the appellate court are [only] available to one who recognizes his responsibility to obey court orders while they remain in effect," and "a litigant is not free to determine to what extent he will comply with the law." *Schmidt v. Schmidt*, 610 A.2d 1374, 1377 (Del.1992).

Further, we observe that Capital Suisse does not contend on appeal that the district court lacked jurisdiction or otherwise lacked authority to enter orders in this case. Rather, Capital Suisse argues only that venue is improper in Utah due to the contractual forum selection clause. Early case law from this court confirms that when a court "has legally acquired jurisdiction of subject-matter and of the parties, [its] jurisdiction . . . is not affected every time [it] thereafter misconstrues, misconceives, or misapplies a statute not involving subject-matter, jurisdiction, or parties, but mere procedure."

State v. Morgan, 44 Utah 224, 230, 140 P. 218, 221 (1914). Error with regard to a determination of proper venue is "simply [an] error[ ] of law" and does not oust the jurisdiction of a court that has properly acquired jurisdiction over the subject matter and the parties to an action. *Morgan*, 44 Utah at 229, 140 P. at 220. While a court's judgment in this regard may be voidable, the error does not go "to the power of the court itself," and "its judgment is not void." *Id.* (internal quotations omitted); *see also Floor v. Mitchell*, 86 Utah 203, 212, 41 P.2d 281, 284-85 (1935) ("The court had jurisdiction of subject-matter. It also by process served had jurisdiction of the person of the defendants. The action here, thus, was not a question of jurisdiction either of subject-matter or of person. It was one merely of venue.").

It is clear that the district court in this case had both subject-matter jurisdiction over the case and personal jurisdiction over the defendants. If the presence of Capital Suisse subsidiaries and bank accounts in Utah alone were not enough to grant personal jurisdiction, then certainly Capital Suisse's prolonged participation in the litigation prior to withdrawal would have been sufficient. Therefore, even if we were to assume that the district court's determination with respect to venue was in error, the district court nevertheless had the authority to enter valid and enforceable orders in this case, and Capital Suisse was obliged to comply.

Furthermore, while a party may permissibly withdraw from litigation and allow a default or summary judgment to be entered against it, a party may not wilfully engage in affirmative acts that frustrate district court orders. Contrary to Capital Suisse's assertions, Capital Suisse did not "simply decline [ ] to participate substantively in the proceedings" in this case. Rather, Capital Suisse defied district court orders by shipping its documents out of state, thwarting HH & C's efforts to trace its assets, and deliberately frustrating the litigation. Moreover, the orders of the district court were both received

and violated by Capital Suisse while Capital Suisse was still meaningfully participating in the litigation.

Capital Suisse also argues that it has a "substantive right to appeal" the district court's denial of its motion to dismiss for improper venue and that it has "'a legal right to insist that the action proceed in the proper venue.'" *See State v. Sosa*, 598 P.2d 342, 344 (Utah 1979), (further quotations omitted). We agree that "[t]he right to appeal is a valuable and constitutional right and ought not to be denied except where it is clear the right has been lost or abandoned." *Adamson v. Brockbank*, 112 Utah 52, 60, 185 P.2d 264, 268 (1947); see also Utah Const. art. VIII, § 5. However, the right to appeal is not absolute and the right may be forfeited, or a valid appeal may be dismissed, due to the acts or omissions of the appellant, including, for example, infractions of the rules of appellate procedure. *See, e.g.*, Utah R.App. P. 3(a) ("Failure of an appellant to take any step . . . is ground . . . for such action as the appellate court deems appropriate, which may include dismissal of the appeal . . . ."); *State v. Housekeeper*, 2002 UT 118, ¶ 23, 62 P.3d 444 ("Failure to timely file an appeal pursuant to rule 4 constitutes a waiver of the right to appeal. Additionally, failure to timely file deprives an appellate court of jurisdiction over the appeal."). In addition, the United States Supreme Court has held that dismissing the appeal of an appellant who wilfully defies court orders does not violate due process, but rather, may be a "reasonable means of safeguarding the collectibility of [a] judgment." *Nat'l Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 41, 43-44, 75 S.Ct. 92, 99 L.Ed. 46 (1954) ("While a statutory review is important and must be exercised without discrimination, such a review is not a requirement of due process.").

As previously explained, in exercising our authority to dismiss the appeals of contumacious appellants, we have discretion to fashion a remedy that is fair and just under the

facts and circumstances of the particular case. Accordingly, we hereby stay this appeal to allow Capital Suisse time to comply with the following conditions, which must be fulfilled before we will entertain the appeal on the merits. First, Capital Suisse must, within thirty days from the date of this decision, bring itself into compliance with the orders of the district court in this matter, including those orders requiring Capital Suisse to comply with discovery and to return all of the requested documents and evidence to Utah. Second, inasmuch as we are concerned that any continued delay will lead to the further dissipation of Capital Suisse's assets, we also require Capital Suisse to post bond with the district court in the amount of any unsatisfied portion of the judgment that has been entered against it.

We therefore remand this matter to the district court to make the following determinations: (1) whether Capital Suisse has adequately complied with the orders of the district court within thirty days from the issuance of this decision; (2) the amount of the unsatisfied portion of the district court judgment; and (3) whether Capital Suisse has posted an adequate bond in that amount.

In light of the various determinations that must be made by the district court on remand, we will allow Capital Suisse ninety days from the date of this decision in which to comply with the conditions specified above. Accordingly, Capital Suisse must, within ninety days, provide this court with notice that it has complied with these conditions, including the relevant orders of the district court regarding whether Capital Suisse has fulfilled the court's discovery orders within the allotted thirty-day time period and posted bond in the appropriate amount. If, at the end of ninety days, Capital Suisse has failed to comply with each of these requirements, or continues to resort to evasive or dilatory tactics, the appeal will be dismissed without further notice or argument.

CONCLUSION

Due to appellants' wilful disobedience and defiance of district court orders, we refuse to reach the merits of this appeal. Instead, we stay the appeal and remand to the district court to make the determinations described herein. Appellants' failure to comply with any of the conditions outlined in this opinion will result in dismissal of the appeal.

Chief Justice DURHAM, Associate Chief Justice WILKINS, Judge ORME, and Judge BEACHAM concur in Justice DURRANT's opinion.

Having disqualified themselves, Justice PARRISH and Justice NEHRING do not participate herein; Court of Appeals Judge GREGORY K. ORME and District Judge RAND G. BEACHAM sat.

APPENDIX B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

[Filed October 20, 2004]

Consolidated Case No. 010905355
Judge Anthony Quinn

In the Matter of:

The Criminal Proceeding of the Kingdom of Spain and Hentsch Henchoz & Cie against:

PHILIP DAVID GUBBAY

Court of First Instance and Instruction
No. 2 Marbella
Court No. 1346/2000

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILIPPE D. DAVID GUBBAY, CAPITAL SUISSE, S.A., CAPITAL SUISSE SECURITIES, INC., ZOOLEY SERVICES LIMITED, ZOOLEY OF UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, and JOHN DOES 1-10,
Defendants.

ORDER DENYING DEFENDANTS' EXPEDITED MOTION SEEKING DECLARATION REGARDING OUTSTANDING ORDERS AND SATISFACTION OF BOND AND DETERMINATION OF DEFNDANTS' COMPLIANCE WITH UTAH SUPREME COURT REQUIREMENTS

The Capital Suisse Defendants'[1] Expedited Motion Seeking Declaration Regarding Outstanding Orders and Satisfaction of Bond came before the Court without hearing.

The Court having reviewed the memoranda and arguments filed by the parties and the Supreme Court Opinion of *Hentsch Henchoz & Cie v. Gubbay*, 2004 UT 64, 505 Utah Adv. Rep. 29,—P.3d—, 2004 WL 1753372, and for good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Capital Suisse Defendants' Expedited Motion Seeking Declaration Regarding Outstanding Orders and Satisfaction of Bond is Denied.

2. Pursuant to the Utah Supreme Court's instructions on remand contained in paragraph 25 of the Supreme Court's Opinion filed August 6, 2004, the Court finds and makes the following determinations:

A. The Capital Suisse Defendants have not adequately complied within thirty days of the Supreme Court's opinion with the prior orders of this Court since they failed to respond to Plaintiff's discovery requests as ordered on November 15, 2001 and February 8, 2002 and since they

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[1] The Capital Suisse Defendants refer to Phillipe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc. and Fernland Limited.

failed to return all of the evidence from Spain as ordered on March 25, 2002.

B. The amount of the unsatisfied portion of this Court's judgment, jointly and severally, against the Capital Suisse Defendants is $27,868,098.63 plus post judgment interest.

C. The Capital Suisse Defendants have not posted any bond with the Court for the unsatisfied portion of the judgment.

DATED this 20 day of October 2004.

BY THE COURT:
[SEAL]
/s/ Anthony Quinn
ANTHONY QUINN
Third Judicial District Court Judge

APPENDIX C

SUPREME COURT OF UTAH

No. 20020683

HENTSCH HENCHOZ & CIE,
Plaintiff and Appellee,

v.

PHILIPPE D. DAVID GUBBAY; CAPITAL SUISSE, S.A.; CAPITAL SUISSE SECURITIES, INC.; CAPITAL SUISSE, INC.; ZOOLEY SERVICES LIMITED; ZOOLEY OF UTAH, INC.; FERNLAND LIMITED; DOUGLAS P. HOYT; and JOHN DOES 1-10,
Defendants and Appellants.

Jan. 11, 2005

PER CURIAM:

This matter is before the court on its own order to show cause. Appellants Philippe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc., and Fernland Limited have failed to comply with this court's decision in the above-captioned matter. *See Hentsch Henchoz & Cie v. Gubbay*, 2004 UT 64, 97 P.3d 1283. Accordingly, it is hereby ordered that their appeal be dismissed.

Having disqualified themselves, Justice PARRISH and Justice NEHRING do not participate herein; Court of Appeals Judge GREGORY K. ORME and Fifth District Judge G. RAND BEACHAM sat.

APPENDIX D

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY,
STATE OF UTAH

[Filed Jul. 17, 2002]

Consolidated Case No. 010905355
Judge Ronald E. Nehring

In the Matter of:

The Criminal Proceeding of the Kingdom of Spain against:

Philip David Gubbay

Court of First Instance and Instruction,
No. 2 Marbella
Court No. 1346/2000

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILIPPE D. DAVID GUBBAY, CAPITAL SUISSE, S.A., CAPITAL SUISSE SECURITIES, INC., CAPITAL SUISSE, INC., ZOOLEY SERVICES LIMITED, ZOOLEY OF UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, and JOHN DOES 1-10,
Defendants.

AFFIDAVIT OF DAVID UTRILLA

David Utrilla being duly sworn deposes and says that:

1. I am President of the U.S. Translation Company. The company is located at 1893 Skyline Drive, South Ogden, Utah 84403. The business of our company, among other things, is to translate documents from foreign languages into

English, and visa versa. We have substantial experience in translating legal documents, as well as providing interpreters for court proceedings. In particular, we regularly translate legal documents from French into English, and we do this service for law firms as well as government agencies. We probably perform this type of service, translating French legal documents, at least on a weekly basis.

2. Our company is a corporate member of the American Translators Association (ATA) and is also recognized by the European Translators Association as being a full service translation company.

3. Our company is one of twelve companies in the United States authorized by the French Government to perform official translations, and our company is the only authorized company in the western region of the United States.

4. Our company was asked to translate one paragraph from a contract originally written in French. To accomplish this translation, we employed two translators. One translator, Claire Bugnet, is located here in the United States and is a native French speaker, and the other, Pascal Deleu, is located in Paris, France, and is also a native French speaker. Our company regularly relies on the abilities of these two translators, and I am familiar with their abilities, and verify that their translations have always been determined to be accurate and correct.

5. We were asked to translate paragraph 12 from the document attached hereto as Exhibit A. I did not inform Mrs. Bugnet nor Mr. Daleu in advance as to who had asked us to perform the translation.

6. As translated from French into English, paragraph 12 would accurately read as follows:

> We agree that any legal action the Funds may be the object of, be brought before the court of the British Virgin Islands, and we renounce to take any possible

legal proceedings against the Funds under other jurisdictions. However, we agree that the Funds may choose to start legal proceedings against us under any jurisdiction directly connected with the place of sending of the mail or any other aspect of our file.

7. We certify our translation to be correct and accurate.

Dated this 22 day of August, 2001.

/s/ David Utrilla
David Utrilla

Subscribed and sworn to before me this 22nd day of August, 2001.

/s/ Cortney C. Judkins
Cortney C. Judkins

APPENDIX E

SALT LAKE CITY, UTAH

MONDAY, MARCH 25, 2002; 10:10 A.M.

HONORABLE RONALD E. NEHRING, JUDGE
PRESIDING PROCEEDINGS

[1] THE COURT: This matter is set for hearing, HHC vs. Gubbay, number 010905355. Counsel, please state your appearances for the record.

MR. LOVE: Perrin Love, your Honor, and Walt Romney for plaintiff Hentsch Henchoz & Cie.

MR. MOXLEY: Paul Moxley and Matt Evans on behalf of Gubbay and all the defendants except for Hoyt and the securities firm.

MR. MOONEY: Jerome Mooney on behalf of Douglas Hoyt, your Honor.

MR. STEPHENS: Brent Stephens for the securities firm, Capital Suisse Securities.

THE COURT: Thank you, gentlemen.

We've got several motions brought by the plaintiff relating to the time for discovery, and we also have a motion to vacate the protective order. I looked at all the papers that I received as of Thursday noon when I left for St. George and I don't think any have shown up after that.

And if everybody agrees that that's what's on the plate, Mr. Love, you may proceed.

MR. LOVE: Thank you, your Honor. Just by way of background, we have filed a motion relating to the anti-suit [2] injunction in the BVI and a related motion here. We've agreed to put that off. We wanted to hear it before the Court began its criminal calendar because there is a scheduled hearing, as if I understand it, to go forward on April 11th in

the BVI. And we wanted to hear that motion here before that hearing took place, but we've been unable to find a date that worked for everybody.

So to my understanding—Mr. Moxley will confirm that—we've agreed that the hearing in the BVI on April 11th will not go forward, or that motion will not be argued, before this Court has a chance to consider that motion. I mean that's my understanding, and it's agreed to that. And so the motions before the Court today are our motion to shorten time for discovery, and then our motion to lift the protective order.

The motion to shorten time for discovery at this point, your Honor, is basically moot. The defendants were required to produce documents on April 9th. That's the 60 days the Court gave them. Even if the Court shortened it at this point, it wouldn't make that much difference. The thing that's important to us now, your Honor, it's our understanding, based on a conversation between Mr. Moxley and Mr. Kaplan, that the documents that were here initially have been moved to Spain, and that it's the defendants' intention to make us go to Spain to inspect those documents.

We want an order of the Court requiring defendants to [3] bring those documents back here so that they are either produced here or that we can inspect them here, and that we not be required to go to Spain to do it. We also request that the defendants be required to bring all of their documents here. If they're just going to copy the documents and make us go over there and inspect them, we think they all ought to be shipped here and let us inspect them here, or just make copies of them and provide them to us.

THE COURT: Now, are the documents which are sought documents which, for the lack of a better term, in the ordinary course of business would be situated in Utah, or was it fortuitous that they were in Utah?

MR. LOVE: It's two things, your Honor. The entity here was Capital Suisse Utah and Fernland Utah. It's my understanding that those two entities, they had an office in One Utah Center, and then it moved over to the new building across from the temple, but they maintain documents in the ordinary course of business, and that those documents, after we filed our discovery request in August with our complaint, were removed to Spain. It's my understanding, that Mr. Moxley told Mr. Kaplan that that was done as a precaution in case any governmental authorities issued a search warrant of the premises, and they were removed to Spain for that purpose.

In their pleading papers, the defendants state that the reason they were moved was there has been a consolidation [4] of operations, and they consolidated operations in Spain. Those documents that belonged and were the property of Capital Suisse Utah, the Utah subsidiary, were maintained in the ordinary course of business in Utah. They should be required to be produced in Utah. I assume there is another set of documents in Spain that belong to the parent company.

THE COURT: Well, if there's an argument that the operations of the Gubbay enterprises have been consolidated in Spain, and if, for example, the documents have been consolidated and there is a fear that the redispersion of those documents would create some kind of diaspora that would last as long as that encountered by the Jews, for example, there are other ways to solve that problem, and that would include, for example, having the Gubbay folks pay for you to go to Spain and look at the documents.

MR. LOVE: That's a possibility, your Honor, but I want to bring one fact to the Court's attention that we've learned over the weekend. Our Spanish lawyer is in the same building in Marbella, Spain, that Capital Suisse, the parent company, is located. It's our understanding, based on his observations in the building, that Capital Suisse has pulled up stakes, that

their name has been taken off the door as of late last week, that a moving—a truck has come up and taken I don't know what, but taken the documents, taken the furniture and whatever, and they have vacated the premises.

[5] It's also our understanding—this is hearsay—that one of the employees of our Spanish lawyer was in the elevator with an employee of Capital Suisse, and that when they, were going down the elevator that Capital Suisse employee had a box of documents, and he told the employee of our Spanish lawyer that he was taking them out to the trash. Now, I can't verify that. I don't have an affidavit for the Court this morning.

THE COURT: Well, this is the first time an elevator conversation has made it into an argument in my courtroom.

MR. LOVE: That's exactly right. But we have a very real apprehension, your Honor, that if those documents remain in Spain, to the extent that they still exist at all, that they are going to be destroyed in Spain, that we will never get them if they're in Spain.

THE COURT: Well, if these people are as nefarious as you say they are, what makes you think they're actually going to send the documents back here based on my order that they do so?

MR. LOVE: Your Honor, I have no expectation one way or another that they will, but what I would like is, if they don't, that we have an order of this Court that's violated. We don't know what to expect from these defendants. I don't have any expectation necessarily that they will comply with any order.

THE COURT: Do you have idea what documents you [6] would—do you have any idea what the general nature and quantity of the documents were that were originally located here?

MR. LOVE: No, I do not. I do know that in the prospectus that was delivered to our client, that Capital Suisse Utah was the administrator of the fund, but there should be documents relating to the administration of the fund. There should be documents relating to investments by the fund, I would assume. That's what we expect to be there.

There would also be documents, we think, your Honor, relating to PetsMarketing, which had a business address in the same office in-the same location as Capital Suisse Utah. We suspect that those documents, such that they exist, have been spirited to Spain as well, and we want those documents brought back as well. But I have to say I am speculating based on the information in the prospectus and the information of just business addresses, who's located where, who's the registered agent, that kind of thing. That is what we would expect to find there.

THE COURT: Uh-huh (affirmative).

MR. LOVE: So that is the first motion we have. Our second motion, your Honor, is that we would like the protective order lifted so that we can—in the words of Deep Throat—we can follow the money, because we have to be able to follow the money in order to try to get our money back, and part of that [7] is based on the reasonable apprehension, as the Court just indicated, that we're never going to get any documents from the defendants, that we'll never be able to trace our money through the documents that they may or may not provide, may have kept, may have destroyed.

What we need to be able to do, your Honor, in order to trace our money and try to get it back, is take the documents from the Zions and the Wells Fargo accounts, take them to other jurisdictions where the money was deposited, like Vanuatu, present those documents, any information in those documents, to the banking authorities in Vanuatu, to the regulatory authorities, so we can get access to whatever

banking records exist in Vanuatu, because we have a reasonable apprehension that we are never going to get those documents from the defendants.

And we need to be able to take the Zions and the Wells Fargo documents, trace it to Vanuatu, and then wherever it goes from there. And we need the protective order lifted so that we can follow our money and that we are no longer limited to presenting the evidence in those documents to the courts or the regulatory authorities in either the BVI or Spain.

We need to be able to follow our money. We need to be able to get it back, particularly in light, as I say, of hearsay, but particularly in light of our belief and reasonable apprehension that they have pulled up stakes, that they are [8] getting rid of the documents, and that the only way we're ever going to have a chance to get any of our money back is to present this information to the regulatory authorities and to the banking authorities in other jurisdictions. And we need to be able to use the documents in that way, and the only way we can do that is to have the protective order lifted in its entirety.

THE COURT: The problem that I have—this surfaces with unfortunate regularity—is that the suggestion that the defendants' affairs are being consolidated in a dumpster in Spain is very provocative, a very provocative allegation, and it happens from time to time that—in fact there may be actually kind of a rule, à la Newtonian physics, that the more provocative the allegation, the thinner the factual basis for it. So it would certainly be useful for me to have more solid support—

MR. LOVE: Sure.

THE COURT: —for the consolidation-in-the-Dumpster theory, but . . .

MR. LOVE: Let me put it this way, that the factual basis for that is the observation of our lawyer in Spain.

THE COURT: Yeah, I know, but I don't have anything in front—

MR. LOVE: I know.

THE COURT: It doesn't—

[9] MR. LOVE: Right.

THE COURT: —rise to level of record—

MR. LOVE: I understand that.

THE COURT: —credibility.

MR. LOVE: I sure understand that. But my point, that is an apprehension on our part—

THE COURT: Yeah.

MR. LOVE: —and the Court does not need to rely on that fact in order to lift the protective order. We need to have the protective order lifted so that we can trace our money and try to get it back.

THE COURT: And I suppose that, just as it would be possible for the Gubbay people to pay for you to visit Spain, you would be willing to pay them to ship the documents back, or copies of the documents.

MR. LOVE: From Spain to here?

THE COURT: Yes.

MR. LOVE: Oh, absolutely.

THE COURT: Yeah.

MR. LOVE: No question about it.

THE COURT: Okay. Thank you.

MR. LOVE: Thank you.

THE COURT: Mr. Moxley. So why shouldn't Love write a check, and you guys copy the documents—it's at his expense—and just send them back?

[10] MR. MOXLEY: Well, can I give you a long answer to that?

THE COURT: Absolutely.

MR. MOXLEY: Okay.

THE COURT: I'll settle back in my chair.

MR. MOXLEY: Thank you. That's probably the worst part about being a judge, is having to listen to all this drivel.

THE COURT: It depends on who's giving the long answer.

MR. MOXLEY: Thank you. Let me try to put this in a context. First of all, when we were last here, on one in many so-called emergency hearings, right before the Olympics started on February the 8th, for about the tenth time they were trying to get you to change the protective order.

THE COURT: But bear in mind—

MR. MOXLEY: I'm going to get to that.

THE COURT: Your long answer has stimulated me to interrupt you, because so-called emergencies take on the appearance of real emergencies when I learn that the day before this hearing your guys filed an anti-injunction proceeding, anti-suit injunction proceeding, in the BVI.

MR. MOXLEY: Well—

THE COURT: It suddenly becomes an emergency.

MR. MOXLEY: Okay. Actually, it was—I think it was [11] that same day.

THE COURT: Okay.

MR. MOXLEY: And quite frankly, I never heard of any anti-suit injunction before, but we're not here to argue—

THE COURT: Me neither, but it scared the hell out of me.

MR. MOXLEY: Well, what happened was, the lawyers in the BVI said that they thought they'd get an injunction, and it's à way to think about that. And we said, "Well, if you can get it, get it."

THE COURT: Okay. But I've knocked you off track.

MR. MOXLEY: Okay. But as far as a fair playing field, as far as injunctions are concerned, nobody in practice does any more than you have to, and we're no different. Okay.

We were here on February the 8th on one of these so-called emergency hearings. And what concerned the Court the most, at least it seemed to us, is that you wanted the judge in the BVI, and maybe Spain, to know about the information in the fact documents. And at least in your own mind, that's how you were justifying your decision, whereas, you know—not justifying. Maybe that's a bad choice of words.

But, you know, you were reviewing the judge's decisions from the BVI, and you were thinking, "Gee, they don't know what I know. There's all this information on the bank documents, money to the father, the wife," blah-blah-blah.

[12] THE COURT: Including, a moment, blah-blah-blah, asserting the Fifth Amendment.

MR. MOXLEY: Absolutely. Okay. So, you know, we finished up that hearing. They had (inaudible). They were supposed to prepare the order. A couple of weeks go by, two or three weeks go by. I called Mr. Kaplan, trying to draw him out, because under the papers they submitted to you, the order you gave us in reference of their documents, they don't want to create a smokescreen. They can't do it under Swiss law. They can't produce what we got you to enter an order about.

Okay. So let me bring you to the relevance. So I—

THE COURT: I don't understand that, though.

MR. MOXLEY: Okay. The weight from their papers, when they argued that you shouldn't compel them to give us their customer information—

THE COURT: Uh-huh (affirmative).

MR. MOXLEY: —what you ordered ultimately, according to their papers, that they weren't stretching it, they can't produce. So they—

THE COURT: I thought I ruled on that.

MR. MOXLEY: You did. You gave us an order they've got to produce it.

THE COURT: And you're saying the papers—

MR. MOXLEY: But they can extract the names—

THE COURT: Correct.

[13] MR. MOXLEY: —of investors. But what they told you, under Swiss law they can't even do that. So I'm calling Kaplan, trying to fish out from him two things. I'm saying—and let's back up one more moment. The primary witness that the plaintiff has in this case no longer works for the bank. He got canned because he made this investment. And under Swiss law, we can't take his deposition. If he agrees to talk to us and cooperate and will leave Switzerland—he won't return our phone calls.

THE COURT: But didn't I address that question also?

MR. MOXLEY: Not really, because it doesn't apply to this guy, because we can't get him unless he'll cooperate with us. So as far as us getting what we need from them, we can't get it, and they know it. Okay?

Now, that causes them other problems with their case. But so I said, "Mr. Kaplan, tell me, are we going to have to go to Switzerland to look at your documents, the customer files?" And he says, "No." And I said, "Well, with respect to the"—and this is almost like elevator conversation.

THE COURT: Which beats elevator music.

MR. MOXLEY: Maybe it's worse. Maybe it's worse. But in any event, I say to Mr. Kaplan—and I told the Court that none of the documents were here, and we'll get to that in a minute. And I said, "Well, you're going to have to go to Spain." And I'm telling him this like, you know, two or three [14] weeks ago so we can make the arrangements and go over there, and he can look at the documents, and if I have to go to Switzerland to look at his documents or we've got to do depositions. It's the spirit of cooperation.

THE COURT: Yeah, because this is very tough duty.

MR. MOXLEY: Yeah. I've had worse. Spending a couple of days in Tooele, that's bad.

THE COURT: There you go.

MR. MOXLEY: More of our documents a little different than this. I'll grant you that. Although I love Tooele.

Anyway, so I'm trying to be proactive and try to address some of these. So then they show up with these papers, taking, I think, my remarks out of context.

Now, let's get to the specifics on the documents. You'll remember, you entered an order last summer freezing our bank accounts. They've been out of business in Utah ever since then. They've left—they've got a temporary up there answering the phone, and those offices are going to be closed within days. There's been no business.

THE COURT: Uh-huh (affirmative).

MR. MOXLEY: And in connection with the—in December, we were looking at what they had, and quite frankly what they had had at that point was only what happened—well, the bank checks that you already gave them. It was the information on the wire transfers from Gibraltar, so it only [15] tells part of the story. And it had due-diligence stuff and

other materials, and the client was consolidating its business, closing down its office.

We gave the instructions or some suggestions, "Well, put them where you would ordinarily put them and don't destroy them," and that's that. And under the rules, it's where the records are kept in the ordinary course, and so they have to go to Spain.

THE COURT: Unless I tell them otherwise.

MR. MOXLEY: Yeah. That's right.

THE COURT: Let's look at this as a practical matter. We're talking about documents which were originally located approximately half a mile from here.

MR. MOXLEY: That's right.

THE COURT: Okay. They are now 12,000 miles from here. They are susceptible to return to half—

MR. MOXLEY: Sure.

THE COURT: —a mile from here.

MR. MOXLEY: Sure.

THE COURT: And technically, you may be right, but you'd be on much solid—more solid ground if those documents were never housed a half a mile from here.

MR. MOXLEY: Yeah, that's true. But the test is the same; it's the ordinary course. But I mean it's hard to get into a legal argument with you about it. I believe that.

[16] THE COURT: Yeah. I'd like to have you guys go to Spain, but it just doesn't—

MR. MOXLEY: Well, the weather's getting pretty good over there.

THE COURT: Yes, it is. But it just strikes me as being silly, would be the legal term.

MR. MOXLEY: Well, first of all, at some point there's a lot over there that has to be looked at anyway by us if we're going to produce everything responsive to this deposition, because everything on the Spanish side, we've never seen it; we don't know what exists. And if they want it, we've got to go over there anyway, and they're not making life easy on us in this case.

THE COURT: Well, let me tell you, I'm—I will tell you I'm sympathetic to finding a way to permit you to take the deposition of the former plaintiff employee. I mean it strikes me that, given my sense of how discovery should work in the country that I would operate as philosopher king, they ought to be able to talk to—you ought to be able to talk to this person.

So my predisposition is to just cut through the undergrowth and kind of create a highway to discovery in this case. I mean that's my overall predilection in this case, to just cut through the crap and get the discovery done as quickly as possible, honoring, as I must, the substantive laws of [17] nation states, but circumventing, where I can, procedural obstacles which are inconsistent with my view, and here my means, the courts of the state of Utah and the United States of America, obstacles to discovery, that's where I'm going on this.

MR. MOXLEY: Well, so in any event, I think it's going to be interesting to see whether they produce their documents in this case, and a lot of this may be a smokescreen, but it's hard, for a lawyer to predict any future event.

With respect to the anti-injunction suit, what we did agree is that we would tell the lawyer in the BVI not to have it heard. Their procedure's a little bit different, and I've explained this to counsel, but if something goes wrong, so you understand it as well. Last time, when we told them that we wanted it continued, he had to appear in court and ask for what they call an adjournment and appear in person to get an extension.

THE COURT: I think they should do that here. I like this idea.

MR. MOXLEY: Yeah, it probably interrupts a good afternoon on the beach. But in any event, that's how it works out there, and that's what we've asked them to do. And the judge in the BVI could rule without a hearing too. I mean just so there's no misunderstanding on what the story is.

THE COURT: Okay. I understand.

[18] MR. MOXLEY: Thank you.

THE COURT: Mr. Stephens, do you want to weigh in on this? Do you have a dog in this fight, so to speak?

MR. STEPHENS: No. I'm going to weigh out. It doesn't involve Capital Suisse Securities. The documents at Capital Suisse Securities, I'm attempting to get clearance dates so that they can look at them. Just to have a gander towards the tribunal, they're asking the change of management, I have been informed, of Capital Suisse Securities, from Slipka, who I was reporting to, to a new board of directors, and apparently a new broker principal, but as far as—the documents that we're talking about today have nothing to do with Capital Suisse Securities.

The Capital Suisse Securities documents were, per agreement, going to be produced at San Francisco. We were getting clearance dates for those documents, and then we had a change in management, and that caused the plaintiff to file its motion to compel because they didn't receive the dilatory (inaudible) clearance dates (inaudible) to go to San Francisco.

I have written them a status report as to where the case is presently. I learned about the change of management approximately a week ago, a week and a half ago, informed counsel for plaintiff as to that fact, wrote the new management a status report, told them that I needed to get a clearance date for the review of documents. I filed a document response [19]

indicating what documents [unintelligible] and everything was perfectly copacetic and running smoothly until we had this change of management.

So hopefully we will get a clearance date soon as to when the plaintiffs can look at or when we will get those documents at Capital Suisse Securities. There cannot be a problem, I can't perceive, of producing the original documents. In any event, we produced a lot of documents voluntarily already. The tracing issue, we produced documents as to that, so we're on a different plane than the so-called Capital Suisse group defendants.

I don't understand what they're complaining. I've explained to my client over and over again that we needed to comply scrupulously and follow orders of the court and all promises made pursuant to discovery, and I plan to fulfill that. So I'm not weighing in as to the problem with the dumpster in Spain.

THE COURT: Uh-huh (affirmative).

MR. STEPHENS: I have no information and no belief that that's where our documents are. I just think that the change in management has caused the problems.

THE COURT: Yeah.

MR. STEPHENS: But it is the flag—I had great confidence in the former management; I don't know the new management. So that's just to be candid with the Court. I'm [20] still trying to get the clearance date.

THE COURT: Thank you, Mr. Stephens.

Mr. Mooney?

MR. MOONEY: And Mr. Hoyt has no position with regards to that.

THE COURT: Yeah, I didn't expect that he would.

Now, Mr. Love, although it's not before me today, I'd just like to encourage a little dialogue about the former employee and that former employee's availability or unavailability to be examined. What's your current knowledge on that?

MR. LOVE: Your Honor, to be honest with you, I don't have any knowledge beyond what we talked about last February 8th. It's my understanding Mr. Joliet is no longer an employee of the bank. Defendants are free to talk to him. We said when we were here February 8th that we would agree to cooperate and try to schedule his deposition. I don't know enough about Swiss law to know whether, if Mr. Joliet says "I don't want to deposed," he can be forced to be deposed. To be honest with you, I don't know anything about that.

THE COURT: Uh-huh (affirmative).

MR. LOVE: I will say we are cooperating in discovery. Contrary to Mr. Moxley's concerns, we fully intend to produce the documents. They're in the process of being redacted. It's my understanding that they are going to be [21] produced here, and we've offered to enter a stipulation with the defendants that we will produce our documents the same day they produce theirs.

THE COURT: Uh-huh (affirmative).

MR. LOVE: And if it's April 9th, that's fine. If it's earlier or later, we're going to produce our documents. They're going to be redacted to remove the name of the customer and the account number so that the customer can't be identified, but we're going to give them the information that the Court told us to produce when we were here February 8th, and we certainly fully intend to go forward with that.

So I'm not sure what Mr. Moxley's talking about when he says he's concerned that this is sort of a smokescreen. What we want are the documents here. We want the documents to be produced here—as the ones that were originally here,

should be ordered to come back. The documents that were originally in Spain should be produced here, and we will pay for those copying charges.

And then the last point, your Honor, and actually at this point it's the more important point, is we need, the protective order lifted so we can trace our money. We said in our pleadings when we were here in February that really the protective order as the exception, not the rule. We ought to be able to take the information in those bank accounts and trace our money across the globe. That's what we need to be [22] able to do, because at this point have no confidence that we're ever going to be able to do that through the documents provided; by defendants.

THE COURT: Yeah. Thank you, Mr. Love.

From time to time it's useful—I think it's actually important for judges to step back and look at what they've done in a case and evaluate whether there's been an evolution in a judge's approach to a case and whether that evolution is a good one or a bad one, or whether the judge is kind of yielding to impulses that are not based on the facts and the law.

Here's what that means in this case. As I look back to my own approach to this case, when it first came to me I was very timid about exercising authority in the face of my ignorance of the rules and the statutes of the other relevant jurisdictions. I'm not embarrassed to tell you that, you know, when this showed up, I didn't know anything about comity. I didn't know anything about the respective rules of procedure, evidence, much less the substantive rules of the relevant jurisdictions.

As I have developed an awareness of the facts in the case, I have abandoned my timidity and replaced it with what I tried to describe to Mr. Moxley, and I think Mr. Moxley accurately addressed what was motivating my decisions in the previous

motion. I read—what's his name? Judge Benjamin? read Judge Benjamin, and you know how I feel about Judge [23] Benjamin. There's somebody who is very skilled—though I've said and I still believe should come here and teach CLE about I writing decisions—but who I believed could have benefitted from the knowledge that I had.

I'm faced now with something about which I—yet another thing about which I have no knowledge, the anti-suit injunction proceeding. I find reinforcement for the view that Judge Benjamin ought to know what's going on, to the extent that any of us know what's going on, before Judge Benjamin or whoever has jurisdiction of that event, rules on that.

So this leads to my rather crude remark about my desire to kind of wield a machete to the obstacles to discovery, wherever they may be, and that's how I'm going to proceed. I only hope that I have the good sense to step back, if confronted with a legitimate argument that there is a rule or rules in other jurisdictions which should be honored, and I should sheathe my machete for a little bit, but I haven't been persuaded of that.

Therefore, with respect to the documents which were the subject of the production request—and here's a limitation that may or may not be relevant—and which were originally housed in Salt Lake City, and maybe other relevant documents that have always been in Spain, what I'm about to say doesn't affect us, except if there's a stipulation of the parties at this point to the contrary.

[24] I'm ordering that those documents, copies of those documents, be produced in Salt Lake City with the expense of copying and shipping to be borne by the plaintiffs. So, although it's not an issue that's before me, and although Mr. Love has indicated that it's his client's intention to do it voluntarily, I'm going to order that the same rule apply to the plaintiffs with respect to documents subject to document-

production requests by the defendants. In other words, the defendants pay, the plaintiffs' copy, the plaintiffs ship.

Turning to the protective order, I totally agree with Mr. Love that the time has come to make everything available to everybody, and I'm not going to hide the ball about this that behind this decision is my belief that the invocation of the Fifth Amendment permits inferences to be drawn from the invocation of the Fifth Amendment supporting the claims made by the plaintiffs in this case, and that one of the consequences of invocation of the Fifth Amendment in a civil action is that the application for protective orders by the party who invokes the Fifth Amendment become more suspect than they otherwise would be, and the obligation of me to permit plaintiffs who have been confronted by the invocation of the Fifth Amendment, those plaintiffs should be afforded an opportunity to get to the bottom of what's going on.

Now, I suppose that the defendants can assert the [25] Fifth Amendment over these documents, too, and we've kind of been through that drill and looked at the cases on that subject during the last go-around, and that's kind of an interesting issue. But the protective is lifted.

Now, if there's some way that I can turn this into an opportunity for you all to travel to Spain and Switzerland, I'm certainly happy to do that, you know.

All right. Mr. Love, if you'd prepare an order.

MR. LOVE: I will. Just so I understand, it was the Court's intention not to issue any ruling whatsoever with regard to the defendants' documents that were originally in Spain and are now in Spain because that's not before the Court? Did the Court intended to order defendants to produce those documents here—

THE COURT: No.

MR. LOVE: Has to produce and pay for it.

THE COURT: No. The issue as I understood it was, what happens — what really offended you, as I understand it, was having the documents shipped back.

MR. LOVE: Yes

THE COURT: And Moxley has a case. Unless there's agreement, you go to where the documents are, where they're kept in the ordinary course of business. The ambiguity here, is, where were the Salt Lake documents kept in the ordinary course of business, and when in time do we look to see where [26] they were kept in the ordinary course of business?

MR. LOVE: But the Court has ordered us to produce our documents that are in Switzerland here, and we would be happy—

THE COURT: But, Mr. Love, bear in mind what the genesis of that was. All I was doing was codifying what you had offered to do voluntarily.

MR. LOVE: Sure.

THE COURT: And so I'm not buying into, the next step, that I should take your voluntary offer, which I have codified, and then turn it into an order that they do the same thing. No, I'm not ready to go that far. You know, if there's law to support it, I'm sure I'll see it, but not yet. I'm not going to do that yet.

MR. LOVE: So that's before the Court. The Court's not issuing any ruling on that issue?

THE COURT: No.

MR. LOVE: All right. Thank you, your Honor.

MR. MOXLEY: Well, why don't we ask you for a ruling about that. Otherwise, we'll be back over here in a week. I mean we intend to produce the documents that are in Spain in Spain. I mean, why dance around it?

THE COURT: Well, because they haven't briefed it. I mean you've told me—

MR. MOXLEY: Okay.

[27] THE COURT: —that the rule is that if they're maintained in the ordinary course in Spain, that that's where the site of production is. Well, I haven't heard from them don't know.

MR. MOXLEY: Okay.

THE COURT: Okay. Thank you.

MR. MOXLEY: Thank you.

THE COURT: We're in recess.

(Proceedings concluded at 10:49 a.m.)

APPENDIX F

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY STATE OF UTAH

[Filed Apr. 2, 2001]

Civil No. 010905355
Judge Ronald E. Nehring

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILLIPE D. DAVID GUBBAY, CAPITAL SUISSE, SA., CAPITAL SUISSE SECURITIES, INC., CAPITAL SUISSE, INC., ZOOLEY SERVICES LIMITED, ZOOLEY OF UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, and JOHN DOES 1-10,
Defendants.

NOTICE OF WITHDRAWAL OF ANSWER

Defendants Phillipe D. David Gubbay, Capital Suisse, S.A., Captial Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc., and Fernland Limited (collectively, the "Capital Suisse Defendants") hereby provide notice to the Court that they are hereby withdrawing their Answer to the Complaint.

The Capital Suisse Defendants and the plaintiff are currently litigating the same set of facts in this action in several different countries, including Spain, Gibraltar, the British Virgin Islands and the United States. In the investment contracts between the Capital Suisse Defendants and HH&C, the parties agreed that all disputes, regarding the contracts would be litigated in one venue, the British Virgin Islands. For this reason, the Capital Suisse Defendants do not believe that this Court has jurisdiction to allow HH&C to proceed in this Court and they lack the resources necessary to litigate

against HH&C in several different countries and jurisdictions. For these reasons, the Capital Suisse Defendants hereby withdraw their Answer as if it were Nunc Pro Tunc. The Capital Suisse Defendants refuse to acknowledge this litigation any further and have instructed their attorneys to take no further action on their behalf.

DATED this 1st day of April, 2002.

HOLME ROBERTS & OWEN LLP

/s/ Paul T. Moxley
PAUL T. MOXLEY
Matthew N. Evans
Christine T. Greenwood
Attorneys for the Capital Suisse Defendants

APPENDIX G

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

[Filed Jul. 17, 2002]

Consolidated Case No. 010905355
Judge Ronald E. Nehring

In the Matter of:

The Criminal Proceeding of the Kingdom of Spain and Hentsch Henchoz & Cie against:

Philip David Gubbay

Court of First Instance and Instruction
No. 2 Marbella
Court No. 1346/2000

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILIPPE D. DAVID GUBBAY, CAPITAL SUISSE, S.A., CAPITAL SUISSE SECURITIES, INC., CAPITAL SUISSE, INC., ZOOLEY SERVICES LIMITED, ZOOLEY OF UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, and JOHN DOES 1-10,
Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST PHILIPPE D. DAVID GABBAY AND THE CAPITAL SUISSE DEFENDANTS

On June __, 2002, the Court heard argument on Plaintiff's Motion for Summary Judgment on the First, Second and

Sixth Claims against the Capital Suisse Defendants.[1] Plaintiff Hentsch Henchoz & Cie ("HH&C") was represented by Neil A. Kaplan, Perrin R. Love and Walter A. Romney, Jr. The Capital Suisse Defendants were properly served and notified of Plaintiffs Motion and chose not to oppose, or be present during the argument on, the Motion.

Based on the evidence presented by HH&C in its Motion, including the undisputed material facts and related exhibits which are deemed admitted and proven, this Court concludes that HH&C has proven by clear and convincing evidence that the Capital Suisse Defendants committed fraud and participated in a civil conspiracy to commit fraud, against HH&C and further concludes that HH&C has proven by a preponderance of evidence that the Capital Suisse Defendants breached their fiduciary duty to HH&C. The Court finds that the Capital Suisse Defendants defrauded HH&C of $24,730,000 by acting in concert to create the appearance of a legitimate investment opportunity in Capital Suisse S.A. (the "Fund"), when, in fact, the Fund was nothing more than a ruse to defraud innocent investors. To induce HH&C to entrust its money to them, the Capital Suisse Defendants fabricated net asset value ("NAV") numbers for the Fund that had no basis in reality. The Capital Suisse Defendants further created the false appearance of legitimacy by misrepresenting that Baker & McKenzie (London) was the legal advisor to the Fund and that Deloitte, Touche & Tomatsu (BVI) was the auditor to the Fund, neither of which was true. Once the Capital Suisse Defendants, through these and other misrepresentations, obtained HH&C's money, they did not invest the money in legitimate investment opportunities as represented, but rather disseminated the money worldwide for the benefit of Phillip D. David Gubbay ("Gubbay"), his relatives, friends, and asso-

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[1] The "Capital Suisse Defendants" refers to Phillipe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc. and Fernland Limited.

ciates, as demonstrated by the exhibits to HH&C's memorandum in support of its motion for summary judgment.

The Court further finds, and the evidence establishes, that the Capital Suisse Defendants intended from the outset to commit fraud on a massive scale and never intended to invest HH&C's money. The purported "Subscription Agreements" between HH&C and the Capital Suisse Defendants, and any related documents, therefore, are void *ab initio*, for fraud. Consequently, the Capital Suisse Defendants have no rights under or arising from those purported Subscription Agreements, and were not, and are not, entitled to redeem HH&C's money "in specie," *i.e.*, with purported assets of the Fund. The evidence further demonstrates that the Capital Suisse Defendants' attempt to force HH&C to accept shares of PetsMarketing, Inc. in lieu of cash was merely another part of the Capital Suisse Defendants' fraudulent scheme and conspiracy. The Capital Suisse Defendants misrepresented to HH&C, and to this Court, the value of the PetsMarketing shares purportedly transferred to HH&C at over $30 million. In fact, those shares had virtually no market or market value. Moreover, the Capital Suisse Defendants themselves manipulated the trading in PetsMarketing, Inc. to boost artificially the publically-quoted price of PetsMarketing, Inc. shares.

This Court's finding that the Capital Suisse Defendants defrauded HH&C is strongly supported by the Capital Suisse Defendants' conduct in this litigation. The Capital Suisse Defendants invoked the Fifth Amendment privilege against self-incrimination to avoid complying with their most basic discovery obligations in this matter. Although this Court ruled that the Capital Suisse Defendants improperly had invoked the Fifth Amendment privilege and ordered them to comply with HH&C's discovery requests, the Capital Suisse Defendants refused to do so. To the contrary, while this litigation was pending, the Capital Suisse Defendants removed documents that they previously had maintained in their Utah

offices to Spain. When ordered by this Court to return the documents and make them available for discovery, the Capital Suisse Defendants refused to comply with the Court's order and abandoned their defense of this litigation. This is not the conduct of legitimate business persons. Indeed, the conspiracy against HH&C is still ongoing, as the Capital Suisse Defendants continue to this day to coordinate with one another to hide and launder HH&C's money, to destroy and conceal evidence of their wrongdoing, and to eliminate the paper trail that would lead HH&C to its money.

In light of the compelling evidence that the Capital Suisse Defendants were, and are, engaged in fraud, and coupled with their improper invocation of the Fifth Amendment and their removal of documents from this jurisdiction, effectively destroying evidence, the Court concludes that the Capital Suisse Defendants knew that the evidence, documents and other information they were ordered, but refused, to provide, would further prove their fraud and assist HH&C to find and recover its assets.

The Capital Suisse Defendants' recent refusal to acknowledge this litigation is simply another ploy to avoid the consequences of their worldwide fraudulent conduct. Until they were ordered to comply with discovery, the Capital Suisse Defendants fully participated in the defense and litigation of this case by, among other things, filing an Answer to the Verified Complaint, serving discovery requests upon HH&C, filing several motions to dismiss on various substantive and procedural grounds, and twice seeking leave of the Utah Supreme Court to file interlocutory appeals. Based on the record and evidence in this matter, it is abundantly clear that this Court properly exercised jurisdiction over the Capital Suisse Defendants.

The Court having carefully reviewed the memoranda filed by HH&C, including the exhibits thereto, and having con-

sidered the arguments of counsel, and for good cause appearing.

IT IS HEREBY ORDERED, ADJUDGED and DECREED AS FOLLOWS:

1. HH&C's Motion for Summary Judgment on the First, Second and Sixth Claims against the Capital Suisse Defendants is GRANTED.

2. Upon entry of the Judgment, monies held pursuant to this Court's temporary restraining order at Zions First National Bank and Wells Fargo Bank, shall be immediately released to Plaintiff and the bonds that HH&C posted as security for the temporary restraining order shall also be released to HH&C.

3. The Capital Suisse Defendants, and all others acting in concert with them, are permanently enjoined from transferring and/or dissipating HH&C's assets and monies and from hiding, destroying or otherwise disposing of any records, documents or property belonging or in any way relating to HH&C's monies, to the flow of assets, proceeds, property or investments relating to those monies.

4. The Capital Suisse Defendants assets worldwide, wherever they may be located, are frozen and ordered attached, garnished and subject to the imposition of a constructive trust, to satisfy the money damages judgment awarded herein.

5. The Court determines, pursuant to Utah R. Civ. P. 54(b), that there is no just reason for delay of entry of judgment. The Court directs, pursuant to Utah R. Civ. P. 54(b), that final Judgment be entered in favor of Plaintiff HH&C against Defendants Philippe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc. and Fernland Limited on the First Claim for fraud, the Second Claim for breach of fiduciary duty and the Sixth Claim for civil conspiracy. The Court notes that the litigation

in this case is complete against the Capital Suisse Defendants and that the courts adjudicating other actions involving some or all of the Capital Suisse Defendants in Spain, Gibraltar and the British Virgin Islands may want to be advised of this Court's final judgment.

DATED this 16th day of July 2002.

APPENDIX H

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Consolidated Case No. 010905355
Judge Ronald E. Nehring

In the Matter of:

The Criminal Proceeding of the Kingdom of Spain and Hentsch Henchoz & Cie against:

Philip David Gubbay

Court of First Instance and Instruction
No. 2 Marbella
Court No. 1346/2000

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILIPPE D. DAVID GUBBAY, CAPITAL SUISSE, S.A., CAPITAL SUISSE SECURITIES, INC., CAPITAL SUISSE, INC., ZOOLEY SERVICES LIMITED, ZOOLEY of UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, AND JOHN DOES 1-10,
Defendants.

This action came on for hearing, before the Court, on Plaintiff Hentsch Henchoz & Cie's ("HH&C") motion for summary judgment on the first, second and sixth claims in the Verified Complaint against Defendants Philippe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc. and Fernland Limited.

The issues having been heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED as follows:

1. Judgment is entered in favor of HH&C and jointly and severally against Defendants Philippe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc, and Fernland Limited, for their fraud in the principal amount of $24,730,000 plus prejudgment interest in the amount of $3,138,098.63 for a judgment on HH&C's fraud claim in the amount of $27,868,098.63.

2. Judgment is entered in favor of HH&C and jointly and severally against Defendants Philippe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc. and Fernland Limited for their breach of fiduciary duty in the principal amount of $24,730,000 plus prejudgment interest in the amount of $3,138,098.63, for a judgment on HH&C's breach of fiduciary duty claim in the amount of $27,868,098.63.

3. Judgment is entered in favor of HH&C and jointly and severally against Defendants Philippe D. David Gubbay, Capital Suisse, S.A., Capital Suisse, Inc., Zooley Services Limited, Zooley of Utah, Inc. and Fernland Limited for their civil conspiracy in the principal amount of $24,730,000 plus prejudgment interest in the amount of $3,138,098.63 for a judgment on HH&C's civil conspiracy claim in the amount of $27,868,098.63.

4. The Capital Suisse Defendants, and all others acting in concert with them, are permanently enjoined from transferring and/or dissipating HH&C's assets and monies and from hiding, destroying or otherwise disposing of any records, documents or property belonging or in any way relating to HH&C's monies, to the flow of assets, proceeds, property or investments relating to those monies.

5. The Capital Suisse Defendants assets worldwide, wherever they may be located, are frozen and ordered attached, garnished and subject to the imposition of a constructive trust, to satisfy the money damages judgment awarded herein.

DATED this 16 day of July 2002.

BY THE COURT

/s/ Judge Ronald E. Nehring
JUDGE RONALD E. NEHRING
Third District Court

APPENDIX I

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

[Filed Sep 3, 2004]

Consolidated Case No. 010905355
Judge Anthony Quinn

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILIPPE D. DAVID GUBBAY, CAPITAL SUISSE, S.A., CAPITAL SUISSE SECURITIES, INC., CAPITAL SUISSE, INC., ZOOLEY SERVICES LIMITED, ZOOLEY of UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, AND JOHN DOES 1-10,
Defendants.

AFFIDAVIT OF PHILIP D. GUBBAY

Philippe D. Gubbay, being duly sworn, states as follows:

1. I am over twenty-one years old and am competent in all respects to make this Affidavit. I have personal knowledge of the facts stated herein.

2. I am a citizen of France and currently a resident of Spain.

3. I am a director of Fernland Limited ("Fernland"), which is a director of Capital Suisse, S.A. ("the Fund"), a foreign corporation.

4. I am also an officer and director of Zooley Services, Limited ("Zooley"), a foreign corporation.

5. On approximately July 25, 2000, the Spanish Marbella Court entered a Precautionary Measure, ordering that all of my personal assets and the assets of all companies under my direction and control in Spain be frozen. This Precautionary Measure became effective indefinitely on approximately January 24, 2001. The July 25, 2000 Precautionary Measure remains in effect at the present time.

6. On approximately May 15, 2001, the Spanish Marbella Court extended the July 25, 2000 Precautionary Measure to include the assets held by myself and the Fund in Gibraltar, Amsterdam, and New York City. A true and correct copy of the May 15, 2001 Extension is attached hereto as Exhibit 1.

7. The Spanish Marbella Court further extended the July 25, 2000 Precautionary Measure on approximately May 17, 2001 to include the Wells Fargo Bank and Zions First National Bank accounts in Salt Lake City, Utah of myself, the Fund and Zooley. A true and correct copy of the May 17, 2001 Extension is attached hereto as Exhibit 2.

8. On March 6, 2002, the Spanish Court entered an Order continuing in effect its Precautionary Measures freezing assets. A true and correct copy of the March 6, 2002 Order is attached hereto as Exhibit 3.

9. On March 12, 2002, the Spanish Marbella Court entered an additional order reaffirming its March 6, 2002 Order. A true and correct copy of the March 12, 2002 Order is attached hereto as Exhibit 4.

10. The Spanish Marbella Court's March 12, 2002 Order remains in effect at the present time.

11. The Fund, Fernland, Zooley and I have no assets in locations not expressly included the Spanish Marbella Court's Precautionary Measures and Orders.

12. Capital Suisse, Inc., Capital Suisse Securities, Inc. and Zooley of Utah, Inc. are no longer active, solvent entities.

13. In its August 6, 2004 Opinion, the Utah Supreme Court ordered "Capital Suisse"[1] to post an adequate bond with the district court within 30 days of the date of the Order.

14. Because the Precautionary Measures and Orders entered by the Spanish Marbella Court prohibit the disposal (in any form) of any of the assets of myself or any company under my direction or control, including the Fund, Fernland and Zooley, any attempt these companies or me to post the bond required by the Utah Supreme Court would violate the Precautionary Measures and Orders of the Spanish Marbella Court and would potentially subject me and the companies to criminal charges for contempt of court.

15. Even if the Precautionary Measures and Orders entered by the Spanish Marbella Court were not in effect, neither the Fund, Zooley, Fernland nor me have sufficient funds to post the bond required by the Utah Supreme Court. In fact, I am bankrupt.

16. I have attempted to secure an adequate bond for myself and the companies but all such attempts have failed.

17. I understand that the judgment entered by the district court on July 18, 2002, is in effect until reversed by the Utah Supreme Court, and that Plaintiff can execute on this judgment.

18. Capital Suisse has not sought a stay of execution of judgment in this matter due to its financial inability to post a bond.

DATED this 30th day of August, 2004.

/s/ Philippe D. Gubbay

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[1] The Utah Supreme Court defined "Capital Suisse" in its opinion as myself and The Capital Suisse Group of Companies, which includes the Fund, Zooley and Fernland in addition to Capital Suisse, Inc., Capital Suisse Securities, Inc. and Zooley of Utah, Inc. *See Hentsch Henchoz & CIE v. Gubbay*, ---P.3d---, 2004 WL 1753372 (Utah 2004).

Yo, MAURICIO PARDO MORALES, Notario del Ilustre Colegio de Granada, con residencia en Marbella, LEGITIMO la firma, sin entrar en el contenido del documento, de DON PHILIPPE DONALD DAVID GUBBAY, con Tarjeta de Identidad Belga numero 980378303039, por haber sido estampada en mi presencia.

Marbella a 30 de Agosto de 2004.

[SEAL]

Exhibit 1

Court of first instance and instruction n° 2 of Marbella

Avda. Mayorazgo n° 14
Tel: 952-77-32-92 Fax: 052-82-07-91.
Deparment: E
Proceedings: committal proceedings 1346/2000
On: fraud
Of: Nora Patricia Balzarotti de Julián
Against: Philip David Gubbay y Jonathan B. Stables

Mr. Alfonso Llamas Soubrier, Secretary of the Court of Instruction number 2 of Marbella.

I certify: That in the criminal proceedings followed in this court number 1346/2000 on fraud has been issued the following order

ORDER

In Marbella, 15th of May 2001

Facts

The lawyer of the accuser Mrs. Nora Julián, has appeared before this court asking for the issue of an order to the bank ABN AMRO BANK, whose main offices are in Amsterdam, with branches in Madrid and in Gibraltar, as well as in New York (USA), where the company CAPITAL SUISSE S.A., and PHILIP DONALD DAVID GUBBAY, hold or held accounts, in order for these bank to proceed to the freezing and preventive seizure of the balances of the bank accounts, deposits of securities, bonds, shares, public debt, contents of security boxes, or other financial assets existing in favour of the persons or companies which are included in the ruling of this order, or on which they have powers, whatever the form of administration may be.

To provide this court with all the information existing on the bank accounts, deposits of securities, bonds, shares, public

debt, security boxes or other financial assets, and on any other they might have held, although they might now be cancelled, included all the transfers carried out from these or other accounts, providing the numbers of these, addressee banks and beneficiaries of them, as holders or authorized persons, having to hand all the supporting documentation, in particular relating to the opening of the same, statements of operations, details of direct debiting or correspondence or any other that might be of interest for the investigation.

To authorize the lawyer Mr. Luis Juega Garcia, to obtain from said banks any other complementary information or documentation he considers necessary to pursue the operations that are known and are of interest for the investigation.

To revoke the transfer orders and orders of purchase of assets, pending to be executed, may they be temporary or permanent, being the bank obliged to inform this court on the presentation of bills of exchange, cheques or other presented for payment.

Legal Grounds

FIRST.—The preventive measures in criminal proceedings, respond to the necessity to ensure the efficiency of the future judgement of the judicial organ and have an instrumental or subordinated character with respect to the definitive resolution on the merits of the case, being essentially temporary, being related to the proceedings they are connected to being pending—ATC 13.40/1987, of 9th of December. The adoption of said measures corresponds to the judicial organs competent to resolve the proceedings that motivate them. They are regulated in various norms, as are arts. 334ff. of the LECr. under the heading body of the crime, interpreting the jurisprudence what is to be understood as this in a wide sense, as all materialities relatively permanent on which or with which has been committed the crime, as well as any other thing that is immediate effect of the crime or refers to it in such a way

that it may be used to prove it—STS 6.2. 82-. Likewise, art. 13 of the LECr. establishes as one of the first measure to protect the victim.

SECOND.—In the present case and in view of the results of the investigations of the Police, it is proper to approve the measures the appearing lawyer has asked for and which will be described in the ruling of this resolution.

RULING

It is ordered the freezing and preventive seizure of the balances of the bank accounts, deposits of securities, bonds, shares, public debt, contents of security boxes, or other financial assets existing in favour of the persons or companies which are included in the ruling of this order, or on which they have powers, whatever the form of administration may be.

To provide this court with all the information existing on the bank accounts, deposits of securities, bonds, shares, public debt, security boxes or other financial assets, and on any other they might have held, although they might now be cancelled, included all the transfers carried out from these or other accounts, providing the numbers of these, addressee banks and beneficiaries of them, as holders or authorized persons, having to hand all the supporting documentation, in particular relating to the opening of the same, statements of operations, details of direct debiting or correspondence or any other that might be of interest for the investigation.

To authorize the lawyer Mr. Luis Juega Garcia, to obtain from said banks any other complementary information or documentation he considers necessary to pursue the operations that are known and are of interest for the investigation.

Likewise are revoked the transfer orders and orders of purchase of assets, pending to be executed, may they be temporary or permanent, being the bank obliged to inform this court on the presentation of bills of exchange, cheques or

other presented for payment.

All of this with relation to the following persons and companies:

PHILLIP DONALD DAVID GUBBAY with NIE X-1992018-B

ZOOLEY SERVICES LIMITED

PERICIA S.L.

CAPITAL SUISSE S.A.

The public prosecutor and the other parties of the proceedings are to be informed on this resolution and on the possibility to appeal against it to this court within 3 days.

This is what decides and signs Blanca Esther Diez Garcia, judge of court number 2 of Marbella. I give faith.

The above coincides exactly with its original to which I refer and I sign the present in Marbella, on 17th of May of 2001. I give faith.

Court of first instance and instruction n° 2 of Marbella

Avda. Mayorazgo n° 14
Tel: 952-77-32-92 Fax: 052-82-07-91.
Deparment: E
Proceedings: committal proceedings 1346/2000
On: fraud
Of: Nora Patricia Balzarotti de Julian
Against: Philip David Gubbay y Jonathan B. Stables

By virtue of the approved in the above mentioned proceedings, please find attached certification issued by the Secretary of the Court, of the order of preventive measures dictated, in order to serve you as order so you can proceed to see to its execution, having to inform the court on its outcome.

In Marbella, 15th of May 2001

The Judge

Director of ABN AMRO BANK

Exhibit 2

Court of first instance and instruction n° 2 of Marbella

Avda. Mayorazgo n° 14
Tel: 952-77-32-92 Fax: 052-82-07-91.
Deparment: E
Proceedings: committal proceedings 1346/2000
On: fraud
Of: Nora Patricia Balzarotti de Julián
Against: Philip David Gubbay y Jonathan B. Stables

By virtue of the approved in the above mentioned proceedings, please find attached certification issued by the Secretary of the Court, of the order of preventive measures dictated, in order to serve you as order so you can proceed to see to its execution, having to inform the court on its outcome.

In Marbella, 17th of May 2001

The Judge

Director of Wells Fargo Bank

Court of first instance and instruction n° 2 of Marbella

Avda. Mayorazgo n° 14
Tel: 952-77-32-92 Fax: 052-82-07-91.
Deparment: E
Proceedings: committal proceedings 1346/2000
On: fraud
Of: Nora Patricia Balzarotti de Julián
Against: Philip David Gubbay y Jonathan B. Stables

Mr. Alfonso Llamas Soubrier, Secretary of the Court of Instruction number 2 of Marbella.

I give faith: That in the criminal proceedings followed in this court number 1346/2000 on fraud has been issued the following order

ORDER

In Marbella,17th of May 2001

Facts

The lawyer of the accuser Mrs. Nora Julián, has appeared before this court asking for the issue of an order to the bank WELLS FARGO BANK in SALT LAKE CITY, and to ZIONS FIRST NATIONAL BANK or alternatively ZIONA FIRST NATIONAL BANK in the same city of the United States, as well as to the BANK OF AMERICA in the city of Las Vegas, State of Nevada of the same country, to which from the accounts of Gibraltar have been transferred funds and where the companies CAPITAL SUISSE S.A., ZOOLEY SERVICES LIMITED and PHILIP DONALD DAVID GUBBAY, hold or held accounts, in order for these banks to proceed to the freezing and preventive seizure of the balances of the bank accounts, deposits of securities, bonds, shares, public debt, contents of security boxes, or other financial assets existing in favour of the persons or companies which are included in the ruling of this order, or on which they have powers, whatever the form of administration may be.

To provide this court with all the information existing on the bank accounts, deposits of securities, bonds, shares, public debt, security boxes or other financial assets, and on any other they might have held, although they might now be cancelled, included all the transfers carried out from these or other accounts, providing, the numbers of these, addressee banks and beneficiaries of them, as holders or authorized persons, having to hand all the supporting documentation, in particular relating to the opening of the same, statements of operations, details of direct debiting or correspondence or any other that might be of interest for the investigation.

To authorize the lawyer Mr. Luis Juega Garcia, to obtain from said banks any other complementary information or documentation he considers necessary to pursue the operations that are known and are of interest for the investigation.

To revoke the transfer orders and orders of purchase of assets, pending to be executed, may they be temporary or permanent, being the bank obliged to inform this court on the presentation of bills of exchange, cheques or other presented for payment.

Legal Grounds

FIRST.- The preventive measures in criminal proceedings, respond to the necessity to ensure the efficiency of the future judgement of the judicial organ and have an instrumental or subordinated character with respect to the definitive resolution on the merits of the case, being essentially temporary, being related to the proceedings they are connected to being pending—ATC 13.40/1987, of 9th of December. The adoption of said measures corresponds to the judicial organs competent to resolve the proceedings that motivate them. They are regulated in various norms, as are arts. 334ff. of the LECr. under the heading body of the crime, interpreting the jurisprudence what is to be understood as this in a wide sense, as all materialities relatively permanent on which or with which has been committed the crime, as well as any other thing that is immediate effect of the crime or refers to it in such a way that it may be used to prove it—STS 6.2.82-. Likewise, art 13 of the LECr. establishes as one of the first measure to protect the victim.

SECOND.- In the present case and in view of the results of the investigations of the Police, it is proper to approve the measures the appearing lawyer has asked for and all this in relation with the treaty on legal assistance in criminal matters signed between the kingdom of Spain and the United States of America, on 20th of November of 1990, ratified on 23rd of April 1993 and published in B.O.E. of 17th of March of 1993, having to be dealt with in the way foreseen in said treaty, with delivery of the corresponding orders to the petitioner so he can see to their execution, measures which will be said in the ruling of this resolution.

RULING

It is ordered the freezing and preventive seizure of the balances of the bank accounts, deposits of securities, bonds, shares, public debt, contents of security boxes, or other financial assets existing in favour of the persons or companies which are included in the ruling of this order, or on which they have powers, whatever the form of administration may be, in the banks mentioned in the facts of this resolution.

To provide this court with all the information existing on the bank accounts, deposits of securities, bonds, shares, public debt, security boxes or other financial assets, and on any other they might have held, although they might now be cancelled, included all the transfers carried out from these or other accounts, providing the numbers of these, addressee banks and beneficiaries of them, as holders or authorized persons, having to hand all the supporting documentation, in particular relating to the opening of the same, statements of operations, details of direct debiting or correspondence or any other that might be of interest for the investigation.

To authorize the lawyer Mr. Luis Juega Garcia, to obtain from said banks any other complementary information or documentation he considers necessary to pursue the operations that are known and are of interest for the investigation.

Likewise are revoked the transfer orders and orders of purchase of assets, pending to be executed, may they be temporary or permanent, being the bank obliged to inform this court on the presentation of bills of exchange, cheques or other presented for payment.

All of this with relation to the following persons and companies:

PHILLIP DONALD DAVID GUBBAY with NIE
X-199201 8-B
ZOOLEY SERVICES LIMITED
PERICIA S.L.
CAPITAL SUISSE S.A.

The corresponding orders are to be issued, which will be handed to the appearing lawyer so he can see to their execution.

The public prosecutor and the other parties of the proceedings are to be informed on this resolution and on the possibility to appeal against it to this court within 3 days.

This is what decides and signs Blanca Esther Diez Garcia, judge of court number 2 of Marbella. I give faith.

Formality.- In the following the approved is complied with. I give faith.

The above coincides exactly with its original to which I refer and I sign the present in Marbella, on 17th of May of 2001.

Juzgado de Primera Instancia e Instrucción n° 2 de Marbella

Avda vlayorazgo n° 14
Telefono: 952-77-32-92 Fax: 952-82-07.91.
Necociado: E
Procedimiento: DIL.PREVIAS 1346/2000.
Sobre: ESTAFA
N.I.G.: 290650022000016 77.
De: NORA PATRICIA BALZAROTTI DE JULIAN
Contra: PHILIP DAVID GUBBAY y JONATHAN B. STABLES

En virtud de lò acordado en el procedimiento de referencia, ADJUN TO el remite certificacion expedida por el Sr. Secrertario del Juzgado, del auto de medidas cautelares dictado, a fin de que le sirva de mandamiento y proceda a su cumplimiento, debiendo da cuenrta a este Juzgado de su resultado.

En Marbella, a 17 de mayo de 2001.

EL/LA Magistrado-juez

SR. DIRECTOR DEL WELLS FARGO BANK

Juzgado de Primera Instancia e Instrucción n° 2 de Marbella

Avda Mayorazgo n° 14
DIL.PREVIAS 1346/2000
Ejecutoria n°:
Negociado: E
Número de Identificación General: 29065002200001677
De: NORA PATRICIA BALZAROTI7 DE JULIAN
Procurador/a;
Letrado/a:
Contra:
Procuradorla:
Letrado/a:

DON Alfonso LLamas Soubrier SECRETARIO DEL JUZGADO DE INSTRUCCION NUMERO Dos DE LOS DE Marbella.

DOY FE: Que en las que se siguen en este Juzgado con el número 1346/2000 sobre ESTAFA contra con domicilio en se ha dictado con esta fecha Auto que comprende el siguiente,

AUTO

En Marbella a diecisiete de Mayo de dos mil uno.

HECHOS

Por el Letrado de la denunciante DÑA NORA JULIAN, se ha realizado was comparecencia ante este Juzgado solicitando se libre mandamiento al Banco WELLS FARGO BANK en SALT LAKE CITY,y al ZIONS FIRST NATIONAL BANK o alternativamente ZIONA FIRST NATIONAL BANK en la misma Ciudad de los Estados Unidos, asi como en el BANK OF AMERICA en la Ciudad de Las Vegas, Estado de Nevada dell mismo Pais, a los que desde las cuentas de Gibraltar se han transferidos fondos y donde la empresa a CAPITAL SUISSE S.A., ZOOLEY SERVICES LIMITED y PHILIP DONALD DAVID GUBBAY, mantienen o mantenían cuentas, para que por parte de dichas entidades se proceda al

BLOQUEO Y EMBARGO PREVENTIVO de los saldos de las cuentas bancarias, depósitos de valores, títulos, acciones, deuda publica, contenido de cajas de seguridad, u otros activos financieros existentes a favor de las personas y sociedades que se incluirán en la parte dispositiva de esta resolución, sobre los que ostenten poderes, cualesquiera que sea la forma de administración.

Facilitar a este Juzgado, toda la información existente sobre las cuentas bancarias, depósitos, de valores, titulos, acciones, deuda publica, cajas de seguridad u otros activos financieros, y sobre cualquier otra que hubieran tenido, aunque en la actualidad se encuentren canceladas, incluido cuantas transferencias se hubiesen efectuado desde las mismas a otras cuentas, facilitando los númuros de estas, Bancos destinatarios y beneficiarios de ellas, bien sea como titulares o autorizados, debiendo entregar los soportes documentales correspondientes, en particular relativos a la apertura de las mismas, extractos de operaciones, datos de domiciliación o correspondencia y cualesquiera otros que pudieran ser útiles para la investigación.

Autorizar al Letrado D. LUIS JUEGA GARCIA a recabar de dicha Entidad bancaria cualquier otra información y documentación complementaria que consideren necesaria para realizar el seguimiento de las operaciones que se vayan conociendo y resulten de interés para la investigación.

Revocar las ordenes de transferencia y ordenes de compraventa de activos, pendientes de tramitación ya sean eventuates o permanentes, hacienda constar la obligación de la entidad de informar a este Juzgado sobre la presentación de efectos cambiarios, cheques u otros presentados al cobro.

RAZONAMIENTOS JURIDICOS

PRIMERO.- Las medidas cautelares en el proceso penal, responden a la necesidad o conveniencia de asegurar la efectividad del pronunciamiento futuro del órgano juris-

diccional y revisten un carácter instrumental o de subordinación respecto a la resolución definitiva sobre el fondo, siendo esencialmente temporales, guardando relación con la pendencia del proceso al que se conectan—ATC 1.340/1987, de 9 de diciembre-. La adopción de tales medidas corresponde a los órganos judiciales competentes para el conociniiento de las diligencias quo las motivan. y Su regulación se encuentra dispersa en diversas normas, como en los art. 334 ss. de la LECr. bajo el epigrafe cuerpo del delito, teniendo la jurisprudencia definido lo que se entiende par tal en sentido amplio, corn todas aquellas materialidades relativamente permanentes sobre las cuales o mediante las cuales se cometió, el delito, asi como cualquier otra cosa que sea efecto inmediato del delito mismo o que se refiera a él de tal modo que pueda ser utilizado para su prueba—STS 6.2.82-. Asimismo, el art. 13 de la LECr. Establece como una de las primeras diligencias la de dar protección, al perjudicado.

SEGUNDO.- En el presente caso y a la vista de los resultados de las investigaciones realizadas por la Policia, será procedente acordar las medidas que el Letrado que ha comparecido solicita y todo ello en relación con el tratado de Asistencia Jurídica mutua en materia penal suscrito entre el Reino de España y los Estados Unidos de America, de fecha 20/11/90, ratificado el 23/4/93 y publicado en el B.G.E. de 17/3/93, debiéndose cursar en la forma prevista en dicho tratado, con entrega de los correspondientes mandamientos al solicitante para que cuide de su diligenciamiento, medidas que se dirá en la parte dispositiva de esta resolutión.

PARTE DISPOSITIVA

SE DECRETA EL BLOQUEO Y EMBARGO PREVENTIVO de los saldos de las cuentas bancarias, depósitos de valores, titulos, acciones, deuda publica, contenido de cajas de seguridad, u otros activos financieros existentes a favor de las personas y sociedades que se incluirán en la parte

dispositiva de esta resolutión, sobre los que ostenten poderes, cualesquiera que sea la forma de administración en las Entidades Bancarias. que se mencionan en los hechos de esta Resolución.

Que se facilite a este Juzgado, toda la información existente sabre las cuentas bancarias, depósitos, de valores, titulos, acciones, deuda publica, cajas de seguridad u otros activos financieros, y sobre cualquier otra que hubieran tenido, aunque en la actualidad se encuentren canceladas, incluido cuantas transferencias se hubiesen efectuado desde las mismas a otras cuentas, facilitando los números, de estas, Bancos destinatarios y beneficiarios de ellas, bien sea coma titulares o autorizados, debiendo entregar los soportes documentales correspondientes, en particular relativos a la apertura de las mismas, acto, extractos de operaciones, datos de domiciliación o correspondencia y cualesquiera otros que pudieran ser útiles para la investigatión.

Autorizar al Letrado D. LUIS JUEGA GARCIA a recabar de dicha Entidad bancaria cualquier otra información y documentación complementaria que consideren necesaria para realizar el seguimiento de las operaciones que se vayan conociendo y resulten de interés para la investigación.

Asimismo se revocan las ordenes de transferencia y ordenes de compraventa de activos, pendientes de tramitación ya sean eventuales o pennanentes, debiendo esa entidad informar a este Juzgado sobre la presentación de efectos cambiarios, cheques u otros presentados al cobro.

Todo ello en relacion a las siguientes personas fisicas y juridicas:

PHILLIP DONALD DAVID GUBBAY con NIE X-1992018-B
ZOOLEY SERVICES LIMITED
PERICIA S.L.
CAPITAL SUISSE S.A.

Librense los correspondientes despachos, que se entregaran al Letrado que ha comparecido para su diligenciamiento.

PÓNGASE ESTA RESOLUCION EN CONOCIMIENTO DEL MINISTERIO FISCAL Y DEMAS PARTES PERSONADAS, previniéndoles que contra la misma podrán interponer, ante este Juzgado, RECURSO DE REFORMA en el plazo de TRES DIAS.

Asi lo acuerda, manda y firma D. Blanca Esther Diez García, Magistrado-juez del Juzgado de Primera Instancia e Instrucción n° 2 de Marbella y su partido.- Doy fe.

DILIGENCIA.- Seguidamente se cumple to acordado. Doy fe.

Lo preinserto concuerda bien y fielmente con su original al que me remito y para que conste ysirva de mandamiento en forma extierdo [Illegible] presente en Marbella, a diecisiete de mavo de dos mil uno. Doy fe.

Exhibit 3

JUZGADO DE PRIMERA INSTANCIA E INSTRUCCION NUMERO 2 DE MARBELLA

Avda Mayorazgo n° 14
Telefono: 952-11-32-92. Fax: 952-82-07-91.
Procedimieato: DIL.PREVIAS 1346/2000. Negociado: E
N.J.G.: 2906941 P20002601677.
De: HENTSCH HENCHOZ Y CIA, JARMO RAIMO HELENIUS y NORA PATRICIA BALZAROTTI DE JULIAN
Procurador/a: LEAL ARAGONCILLO, GUILLERMO, LIMA MONTRO, FRANCISCO
Letrado/a:
Contra: PHILIP DAVID GUBBAY y JONATHAN B. STABLES
Procurador/a: RIVAS AREALES, JOSE LUIS
Letrado/a:

AUTO

En Marbella a seis de marzo de dos mil dos.

HECHOS

Por el procurador D. José Luis Riva's Areales presentó escrito en fecha 9 de enero del 2.002, por el que solicitaba el sobreseimiento respecto de los hechos denunciados por Doña Nora de Julián; por providencia de la misma fecha se dio traslado at Ministerio Fiscal, evacuado dicho traslado informo en el sentido que obra unido a las actuaciones.-

RAZONAMIENTOS JURIDICOS

A la vista del informe emitido por el Ministerio Fiscal quien de forma clata determina que los hechos denunciado por Doña Nora de Julian, sin perjuicio de quo los mismos pudieran ser constitutivos de infracción penal, dada las circunstancias concurrentes en el sentido de que los mismos acontecieron fuera del territorio espoñol, y tratandose de

personas que no son nacionalcs de España es claro que no concurren ninguno de los presupuestos para entender que la competencia correponde a los Tribunales Español, asi el Minsiterio Fiscal informa y criteria compartido por esta Instructora que los hechos no se han llevacla a efecto .en España. Está funcedo sobre la obteneión de diversos capitales de ciertos inversores, canalizados a traves de la Sra. DE Julian que se hacen llegar a la entidad que regenta el. Sr. Stabbes, en GRan Bretaña, a, sin que hay tenido participacción alguno territorial ni matrialmente el territorio español. No consta que aqui se haya vencido de la voluntad de la "perjudicada para hacerla desprenderse de los capitales que maneja, por más que puedan existir relaciones entre las entidades señuelo (International inmobiliarie y Zooley) con la española Capital Suisse, relaciones que no influen en la determinación competencial.

Una vez aclarado tal extrerno y lógicamente no cabe entender competente a los tribunales españoles para el conocimiento de dicho asunto, es necesaria hacer referencia a la solicitud de la misma parte procesal que instaba a levantar las medidas cautelares adoptadas, en el presente caso dicha respuesta ha de ser negativa, por cuanto a tenor del conternido del Ministerio Fiscal en el que claramente informa que de to actuado hasta ahora se desprende que los hechos podrían ser constitutivos de un delito de estafa especialmente en to referente a los hechos denunciados por Henscht Hechoz, en tanto que el mismo hizo una inversión y cuando ha pretendido rescatar lo invertido se le sastiface con unas acciones cuya valoración es más que dudosa, es por ello que existiendo elementos por el momento para entender que los hechos son constitutivos de infracción penal sin perjuicio de la necesidad de practicar nuevas diligencias no procede por el momenta levantar las medidas cautelares adoptadas y a resultar de los hechos que se investigan.

PARTE DISPOSITIVA

ESTIMAR INCOMPETENTE ESTE JUZGADO DE MARBELLA PARA LA INSTRUCCION DE LA DENUNCIA INTERPUESTA POR NORA PATRICIA BALZAROTTI DE JULIAN, at haber ocurrido los hechos fuera del territorio español.

NO HA LUGAR A LEVANTAR LAS MEDIDAS CAUTELARES ADOPTADAS EN FECHA 15 Y 17 DE MAYO DEL 2.001.-

PONGASE ESTA RESOLUCION EN CONOCIMIENTO DEL MINISTERIO FISCAL Y DEMAS PARTES PERSONADAS, previniéndoles que contra la misma podran interposer, ante este Juzgado, RECURSO DE REFORMA en el plazo de TRES DIAS.

Asi to acuerda, manda y firma D. MARIA JESUS ALARCON BARCOS Magistrado-juez del JUZGADO DE PRIMERA INSTANCIA B INSTRUCCION NUMERO 2 DE MARBELLA y su partido.- Doy fe.

DILIGENCIA.- Seguidamente se cumple lo acordado, Doy fe.

SWORN TRANSLATION

COURT OF FIRST INSTANCE AND MAGISTRATES COURT N° 2 OF MARBELLA
Avda Mayorazgo if 14, Telephone 952 77 32 92, Fax 952 82 07 91
Type of Proceedings: Pre-trial proceedings n° 1346/2000.
Section: E
N.I.G. 2906941 P20002001677
Filed by: HENTSCH HENCHOZ & Co., JARMO RAIMO HELENIUS and NORA PATRICIA BALZAROTTI JULIAN
Court Solicitor: LEAL ARAGONCILLO, GUILLERMO, LIMA MONTERO, FRANCISCO
Lawyer:
Against: PHILIP DAVID GUBBAY, JONATHAN B. STABLES
Court Solicitor: RIVAS AREALERS, JOSE LUIS
Lawyer:

RULING

In Marbella, on the sixth of March, two thousand and two

FACTS

The court solicitor, Mr. Jose Luis Rivas Areales filed a writ on the 9th January 2002 in which he asked for the dismissal of the action in view of the claims made by Mrs. Nora de Julian; this was transferred by court order on the same date to the Public Prosecutor's Office, and once effected I inform as appears attached to the proceedings.

LEGAL REASONINGS

In view of the report issued by the Public Prosecutor who clearly sets out that the facts reported by Mrs. Nora de Julián, notwithstanding the fact that they themselves might constitute a criminal offence, due to the circumstances present in the sense that they occurred outside of Spanish territory and concerning persons who are not of Spanish nationality, it is

evident that none of the suppositions are present whereby this could be construed as being the competence of the Spanish Courts; thus the Public Prosecutor has informed and this Judge shares his opinion, that the facts have not occurred in Spain. It is based on the obtaining of capital from certain investments, channelled through Mrs. De Julián, and that reach the company run by Mr. Stabbes in Great Britain, without any participation regarding territory or material in Spain. There is no mention here that the will of the "injured party" has been overcome to make him/her part with the capital handled, however many relations might exist between the decoy companies (International Inmobiliaria and Zooley) and the Spanish company Capital Suisse, as these relationships do not influence the setting of jurisdiction.

Having clarified that point and logically it cannot be considered the jurisdiction of the Spanish Courts to try this matter, we must refer to the request from the some party regarding the raising of the precautionary measures adopted, and in this case the answer must be negative in so much as in view of the content from the Public Prosecutor in which he clearly informs that from the events to date it is gathered that the facts could amount to fraud, particularly with regard to the facts denounced by Henscht Hechoz as he himself made an investment and when he tried to retrieve what he had invested, he was paid with shares of more than doubtful value, and for this reason, as there are aspects from which, for now, the facts could be construed as amounting to a criminal offence without detriment to the need to conduct new enquiries, it is not appropriate for the precautionary measures to be raised for the moment, pending the results of the facts that shall be investigated.

ORDER OF THE COURT

TO CONSIDER THIS COURT OF MARBELLA AS NOT HAVING JURISDICTION TO TRY THE ACCUSATION LODGED BY NORA PATRICIA BALZAROTTI DE JULIAN, as the facts had occurred outside of Spanish territory.

NO JUSTIFICATION FOR THE RAISING OF THE PRECAUTIONARY MEASURES ADOPTED ON 15TH AND 17TH MAY 2001.

THIS RULING IS COMMUNICATED TO THE PUBLIC PROSECUTOR AND TO THE OTHER PARTIES REPRESENTED, informing them that they may file an APPEAL FOR AMENDMENT in this Court, within the period of THREE DAYS.

Thus it is decided, ordered and signed by Mrs. MARIA JESUS ALARCON BARCOS, Judge of the Court of First Instance and Magistrates Court n° 2 of Marbella and its district. In witness whereof I append my signature.

PROCEDURE: The ruling shall be enforced. In witness whereof I append my signature.

I, Karen MIEJIMOLLE, Official Translator of English/ Spanish, appointed by the Ministry of Foreign Affairs and authorised to sign official translations in any part of Spain,

Do hereby certify that the above is a true and complete translation into ENGLISH of a document drawn up in SPANISH. This translation consists of Two pages that bear my signature and stamp.

In Marbella, on the 13th August 2004

[Logo]

Exhibit 4

JUZGADO DE PRIMERA INSTANCIA E INSTRUCCION NUMERO 2 DE MARBELLA

Avda Mayorazgo n° 14
Telefono: 952-77-32.92. Fax: 952-82-07-91.
Procedimieito: DIL.PREVIAS 1346/2000. Negociasio: E
N.I.G.: 2906941P20002001677.
De: HENTSCH HENCHOZ Y CIA, JARMO RAIMO HELENIUS y NORA PATRICIA BALZAROITI DE JULIAN
Procurador/a: LEAL ARAGONCILLO, GUILLERMO, LIMA MONTERO, FRANCISCO
Letrado/a;
Contra: PHILIP DAVID GUBBAY
Procurador/a: RIVAS AREALES, JOSÉ LUIS
Letrado/a:

AUTO

En Marbella a doce de marzo de dos mil dos.

HECHOS

Que en fecha 15 de Mayo del 2.001, se dicto auto por el que se acordaba decretar el bloqueo y embargo preventivo de los saldos y cuentas corrientes del imputado. D. Philip David Gubbay; Que por auto de fecha seis de Marzo del 2.002 se acordó mantener las medidas cautelares acordadas con anterioridad, y en providencia de la misma fecha se acordó librar comisión rogatoria a Gibraltar a fin de dar cumplimiento dicho auto.

RAZONAMIENTOS JURIDICOS

Dado que el auto de fecha 15 de Mayo de 2.001, se acordó el bloque y embargo preventivo de los saldos cuentas del Imputado D. Philip David Gubbay, y como quiera que por auto de fecha seis de Marzo 2002 se estimó incompetente para conocer del procedimiento seguido a instancia de Doña

Nora Patricia Balzarotti de Julia, no obstante se continua respecto al resto de las denuncias interpuestas, es claro que en orden a garautizar y preservar los dereobos de los demás perjudicados precede mantener subsistentes las media cautelar acordaba en fecha 15 de Mayo del 2.001, pues aún cuando dicha medida se acordó a instancia de la representación de la Sra. Nora Patricia, sin embargo actualmente y dado que efectivarente el imputado mantiene cuentas bancarias en Gilbraltar se considera pertinente librar la comisión rogatoria en cuanto que subsisten los motives que to acordaron si bien respecto a los demás perjudicados.

PARTE DISPOSITIVA

Mantener la Medida cautelar acordada por auto de fecha 15 de Mayo del 2,001, por subsistir los motivos que lo acordaron y para preservar los derechos de los perjudicados HENTSCH HENCHOZ Y JARMO RAIMO E. HELENIUS

PONGASE ESTA RESOLUCION EN CONOCIMIENTO DEL MINISTERIO FISCAL Y DEMAS PARTES PERSONADAS, previniéndoles que contra la misma podrán interponer, ante este Juzgado, RECURSO DE REFORMA en el plaza de TRES DIAS.

Asi lo acuerda, manda y firma D. MARIA JESUS ALARCON BARCOS Magistrado-juez en comisión de serivicios del JUZGADO DE PRIMERA INSTANCIA E INSTRUCCION NUMERO 2 DE MARBELLA y su partido. Doy fe.

DILIGENCIA.- Seguidamente se cumple lo aeordado. Doy fé.

* * * *

the precautionary measures to be raised for the moment, pending the results of the facts that shall be investigated.

ORDER OF THE COURT

TO CONSIDER THIS COURT OF MARBELLA AS NOT HAVING JURISDICTION TO TRY THE ACCUSATION LODGED BY NORA PATRICIA BALZAROTTI DE JULIAN, as the facts had occurred outside of Spanish territory.

NO JUSTIFICATION FOR THE RAISING OF THE PRECAUTIONARY MEASURE ADOPTED ON 15TH AND 17TH MAY 2001.

THIS RULING IS COMMUNICATED TO THE PUBLIC PROSECUTOR AND TO THE OTHER PARTIES REPRESENTED, informing them that they may file an APPEAL FOR AMENDMENT in this Court, within the period of THREE DAYS.

Thus it is decided, ordered signed by Mrs. MARIA JESUS ALARCON BARCOS, Judge of the Court of First Instance and Magistrates Court n° 2 of Marbella and its district. In witness whereof I append my signature.

PROCEDURE: The ruling shall be enforced. In witness whereof I append my signature.

I, Karen MIEJIMOLLE, Official Translator of English/ Spanish, appointed by the Ministry of Foreign Affairs and authorised to sign official translations in any part of Spain,

Do hereby certify that the above is a true and complete translation into ENGLISH of a document drawn up in SPANISH. This translation consists of Two pages that bear my signature and stamp.

In Marbella, on the 13th August 2004

[Seal]

SWORN TRANSLATION

COURT OF FIRST INSTANCE AND MAGISTRATES
COURT N° 2 OF MARBELLA

Avda Mayorazgo n° 14. Telephone 952 77 32 92. Fax 452 82 07 91
Type ay11'reetedings: Pretrial proceedings n° 1346/2000.
Section: E
N.I.G. 2906941 P20002001677
Fired by: HENTSCH HENCHOZ & Co., JARMO RAIMO HELENIUS and NORA PATRICIA BALZAROTTI DE JULIAN
Court Solicitor: LEAL ARAGONCILLO, GUILLERMO, LIMA MONTERO, FRANCISCO
Lawyer:
Against: PHILIP DAVID GUBBAY
Court Solicitor: RIVAS AREALERS, JOSE LUIS
Lawyer:

RULING

In Marbella, on the twelfth of March, two thousand and two

FACTS

That on the 15th May 2001, a ruling was passed whereby an order was issued for the freezing and provisional attachment of the balances and current accounts of the accused, Mr. Philip David Gubbay. That in the court order dated sixth March 2002 it was decided to maintain the precautionary measures adopted previously, and in a ruling on the same date it was decided to issue letters rogatory to Gibraltar in order to fulfil this court order.

LEGAL REASONINGS

In view of the court order dated 15th May 2001 that ordered the freezing and provisional attachment of the balances and accounts of the accused, Mr. Philip David Gubbay, and, as the court order dated 6th March 2002 it was considered not to

be the competence of the court to hear the case brought by Mrs. Nora Patricia Balzarotti de Julia, this however continues with respect to the accusations filed, it is evident that in order to guarantee and protect the rights of the other injured parties, it would be appropriate to maintain the precautionary measure ordered on the 15th May 2001 in force, because even though this measure was ordered on the motion of the representative of Mrs. Nora Patricia, at the present time and given that the accused holds bank accounts in Gibraltar, it is considered to be appropriate to issue letters rogatory insofar as the reasons for that order still subsist, although with respect to the other injured parties.

ORDER OF THE COURT

To maintain the precautionary measure ordered by the ruling passed on 15th May 2001, as the motives for the order still subsist and in order to protect the rights of the other injured parties MR. HENTSCH HENCHOZ and JARMO RAIMO E. HELENIUS.

[Seal]

THIS RULING IS COMMUNICATED TO THE PUBLIC PROSECUTOR AND TO THE OTHER PARTIES REPRESENTED, informing them that they may file an APPEAL FOR AMENDMENT in this Court, within the period of THREE DAYS.

Thus it is decided, ordered and signed by Mrs. MARIA JESUS ALARCON BARCOS, Judge of the Court of First Instance and Magistrates Court n° 2 of Marbella and its district. In witness whereof I append my signature.

PROCEDURE: The ruling shall be enforced. In witness whereof I append my signature.

I, Karen MIEJIMOLLE, Official Translator of English/ Spanish, appointed by the Ministry of Foreign Affairs and authorised to sign official translations in any part of Spain,

Do hereby certify that the above is a true and complete translation into ENGLISH of a document drawn up in SPANISH. This translation consists of TWO pages that bear my signature and Stamp.

In Marbella, on the 13th August 2004

[Seal]

APPENDIX J

IN THE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

[Filed September 27, 2004]

Consolidated Case No. 010905355
Judge Anthony Quinn

HENTSCH HENCHOZ & CIE,
Plaintiff,

vs.

PHILIPPE DAVID GUBBAY, CAPITAL SUISSE, S.A., CAPITAL SUISSE SECURITIES, INC., CAPITAL SUISSE, INC., ZOOLEY SERVICES LIMITED, ZOOLEY OF UTAH, INC., FERNLAND LIMITED, DOUGLAS P. HOYT, AND JOHN DOES 1-10,
Defendants.

SECOND AFFIDAVIT OF PHILIP D. GUBBAY

Philippe D. Gubbay, being duly sworn, states as follows:

1. I am over twenty-one years old and am competent in all respects to make this Affidavit. I have personal knowledge of the facts stated herein.

2. I am a citizen of France and currently a resident of Spain.

3. I am a director of Fernland Limited ("Fernland"), which is a director of Capital Suisse, S.A. ("the Fund"), a foreign corporation.

4. I am also an officer and director of Zooley Services, Limited ("Zooley"), a foreign corporation.

5. The freezing injunctions entered by the Spanish Marbella Court on May 15, 2001 and May 17, 2001 in the action filed by Mrs. Nora de Julian, prompted Hentsch, Henchoz & Cie ("HH&C") to file both separate criminal and civil lawsuits against Capital Suisse and me on May 31, 2001 with the same Spanish Court, using the same lawyers as Mrs. Julian

6. On June 22, 2001, HH&C made misrepresentations both to the United States and Spanish courts and attempted to enforce one of the freezing injunctions issued in favor of Mrs. Julian. HH&C redacted Mrs. Julian's name from the injunctions and replaced it with its own in an attempt to represent to this Court that the injunctions were entered in its favor.

7. HH&C filed a verified complaint in the Third District Court of Utah on August 2, 2001 against Capital Suisse and me.

8. HH&C further filed a complaint against Capital Suisse and me in the jurisdiction of Gibraltar.

9. Mrs. Julian's case against Capital Suisse and me was dismissed by the Spanish Court on March 6, 2002. The freezing injunctions thereafter were entered in favor of HH&C.

10. During February 2002, Capital Suisse, as a result of the continued legal and financial pressures exercised upon it by HH&C and because of the Spanish freezing injunctions, became insolvent and was no longer able to maintain its personnel and operations overseas which involved approximately one hundred (100) persons (42 in Spain).

11. Because Capital Suisse was late on its payroll obligations to most of its employees, many of the employees attempted to exercise pressure on Capital Suisse and me in the courts and out of the courts.

12. As a result of this situation, a large amount of valuable information, equipment, documents, computers, money and other various assets were either stolen or destroyed or used by these employees to blackmail Capital Suisse and me for further money and/or compensation.

13. HH&C has encouraged and/or financed several of these employees to turn against Capital Suisse and cause it further damage. In fact, HH&C has offered all of Capital Suisse's employees that would turn against Capital Suisse free legal assistance. *See* Exh. 1 hereto, Affidavit of Don Juan Antonia Cozar Gil dated October 21, 2002.

14. I have recently returned to Utah all materials (includeing all documents, computers and other electronic data) in the possession and/or control of Capital Suisse and/or me that I could locate that were removed from Utah.

15. I was unable to locate (and Capital Suisse does not possess) any computer hard drives, floppy disks or other electronic data requested by HH&C.

16. I was unable to locate (and Capital Suisse does not possess) the information on "PetsMarketing, Inc." that Dave Smith claims in his Affidavit was sent to Spain.

17. Capital Suisse is in the process of suing the directors of PetsMarketing for fraud and theft of assets to the benefit of "Hartsville Group Inc.", the former subsidiary of PetsMarketing.

18. Capital Suisse's Chartered Accountants have witnesses and can attest to most of the facts represented herein. *See* Exhibit 2 hereto.

19. Capital Suisse and I have complied with all of the requirements issued by the Spanish Courts in proceedings to which HH&C is a party, in terms of accounting and financial information pertinent to those proceedings. HH&C has not requested any further discovery to the Spanish magistrates

and judges and has in fact, requested on June 2, 2004 that discovery be closed and a trial date be set as soon as possible.

Yo, **MAURICIO PARDO MORALES**, Notario del Ilustre Colegio de Granada, con residencia en Marbella, LEGITIMO la firma de **DON PHILIPPE DONALD DAVID GUBBAY**, con Tarjeta de Identidad Belga número 980378303039, por haber sido estampada en mi presencia.

Marbella a 27 de Septiembre de 2.004.

Exhibit 1

JUZGADO DE PRIMERA INSTANCIA E INSTRUCCION NUMERO 2 DE MARBELLA
Avda Mayorazgo n' 14
Teléfono: 952-77-32-92. Fax: 952-82-07-91.
Procedimiento: DIL.PREVIAS 1346/2000. Negociado: E

COMPARECENCIA

NOMBRE Y APELLIDOS: JUAN ANTONIO COZAR GIL
D.N.I./PASAPORTE: 27338723

YA CONSTAN

En Marbella, a veintidós de octubre de dos mil dos.

La persona arriba identificada comparece ante S.S. con mi asistencia y juramentado en forma legal DICE: Que se afirma y ratifica integramente en el contenido del escrito, presentado a su nombre con el num 8327, reconociendo como [ILLEGIBLE] de su puño y letra la firma y rubrica estampada en el mismo.

Leida y hallada [ILLEGIBLE] firma el compareciente [ILLEGIBLE], Doy fe.

DILIGENCIAS PREVIAS 1346/2.000

AL JUZGADO DE INSTRUCCIÓN Nº 2 DE MARBELLA

DON JUAN ANTONIO COZAR GIL, mayor de edad, con domicilio en Avda. de la Constitución 28, 5° B, San Pedro de Alcántara, Marbella y D.N.I.: 27.338.723-A, en mi propio nombre y derecho, comparezco y respetuosamente,

DIGO:

PRIMERO.- Que quien suscribe se personó en el presente procedimiento accediendo a la sugerencia de los letrados del Banco HHC, quienes me sugiñeron que unimie a ellos en la denuncia contra el Sr. Gubbay era la forma más rapida para cobrar unas cantidades que el Sr. Gubbay me adeudaba.

Que, como quiera que estos letrados me ofrecieron su asistencia juridica de forma gratuita, yo accedi a denunciar al Sr. Gubbay, en los términos que constan en mi denuncia.

Que fueron los propios abogados del Banco HHC, que tienen sus oficinas en el mismo edificio donde yo venia prestando mis servicios profesionales para la empresa Capital Suisse, S.L. (Edificio Manna Marbella, Avda. de Severo Ochoa nº 28), quienes redactaron la denuncia, que yo simplemente me limité a firmar.

Que yo no procedi a leer la denuncia, puesto que confiaba en que siendo ellos los abogados sabrian como hacerlo (puesto que yo les habia contado mi problema con el Sr. Gubbay).

Que posteńiormente he tenido plena conciencia de los hechos que figuran en mi denuncia, por lo que siendo FALSOS, y habiendo quebrantado mi confianza, dichos abogados han redactado una denuncia que no se ajusta a lo que pactamos, es por to que ME RETIRO Y DESISTO DE MI DENUNCIA.

SEGUNDO.- Que en relación a los hechos que constan en mi denuncia es cierto que ful empleado por el Sr. Gubbay.

Que la cantidad de 500.000 Ptas. que reclamaba en mi denuncia, se me adeudaba en concepto de Liquidación de Comisiones.

Dicha cantidad ya me ha sido liquidada por la empresa, por lo que ya no me queda nada que reclamar.

Que la empresa me ha explicado que el motivo de la tardanza a la hora de liquidar estas comisiones ha sido de tipo administrativo, puesto que desde que se trasladó la documentación y archivos informáticos de la oficina de la 4ª Planta a las actuales oficinas en la 2ª y 3ª planta, ha habido un cierto desorden, que ha impedido clarificar la situación con mayor prontitud.

Que en relación con el personal contratado por el Sr. Gubbay para trabajar para el grupo Capital Suisse recibia una extraordinaria formación impartida por T.C.I.. (Denver) y I.T.I Chicago y Nueva York) en EEUU. Concretamente yo estuve realizando un curso de "trading bursatil" de 6 meses de duracion, con estancia en EEUU completamente pagada por la empresa. Mi nivel de inglés es medio-alto.

Que la cantidad de 500.000 Ptas. que figura en el contrato con "Swiss Management Corporation LLC" obedece a la cuenta abierta por el Sr. Gubbay a quien suscribe, para que comenzara a operar en bolsa.

Que si bien es cierto que ìnicialmente comenzamos a trabajar realizando simulaciones en el departamento de trading, es rotundamente falso que esa fuese nuestra única ocupación durante los 3 años que estuve prestando mis servicios para el Sr. Gubbay y su grupo de empresas. Esa es una aseveración que de forma gratuita han añadido los abogados del banco HHC, y que yo no manifesté en ningún momento.

Que no es cierto que a los empleados que estábamos trabajando en la 4ª planta se nos solicitara que "*aparentáramos estar operando efectiva y realmente*", todos los empleados estábamos trabajando en lo que se nos habia encomendado.

Si se nos hubiera indicado que debiamos aparentar que estabamos haciendo algo que realmente no estabamos haciendo, yo hubiera sospechado que estábamos metidos en alga turbio o ilegal y habria abandonado inmediatamente dicha empresa.

En varias de las entrevistas que mantuve con los letrados del banco HHC se me insistió mucho sobre ese tema, y yo siempre contesté que estábamos trabajando realmente. Lo que consta en mi denuncia to pusieron los abogados de HHC, no to dije yo.

Es cierto que no se me habia abonado la nómina del mes de febrero y.la liquidación del mes de marzo de 2.002, y pensé que denunciar al Sr. Gubbay por ese motivo era la única forma de poder cobrar que me quedaba, puesto que por la via laboral no se habia conseguido nada.

Que lamento enormemente el perjuicio que haya podido causar al Sr. Gubbay con esta denuncia, de la que me retracto integramente.

Por todo to anteriormente expuesto,

SUPLICO AL JUZGADO: Que teniendo por presentado este escrito, se sirva admitirlo, y en su virtud, acuerde conforme se tiene por solicitado, y ME TENGA POR DESISTIDO Y APARTADO DE MI DENUNCIA, archivando las citadas actuaciones, en ste que a mi respecta.

Por ser de Justicia que pido en Marbella (Málaga), a 21 de Octubre de 2.002.

/s/ [ILLEGIBLE]
[ILLEGIBLE]

Case Number: 1346/2.000

TO THE COURT N°2 OF MARBELLA

I MR JUAN ANTONIO COZAR GIL, over 21, living at Avenue of the Constitution 28, 5°B, in San Pedro de Alcántara, Marbella with the following ID#: 27.338.723-A, acting in my own name and own right come forward with all the respect due to this court to:

SAY:

FIRSTLY.—That I joined this court action under the advice and recommendation of the lawyers of the bank HH&C who suggested that by joining the bank in its court action against Mr. Gubbay I was choosing the best and fastest route to recuperate the money I was owed.

Because they offered me free legal assistance I then accepted to sue Mr. Gubbay along the side of the bank in accordance with the content of my complaint

The lawyers of bank HH&C with no input of mine, who have their offices in the same building than the ones of Mr. Gubbay where I used to go to work for "Capital Suisse SL" (Edificio Marina Marbella, Avenue de Severo Ochoa n°28), drafted my complaint, that I simply signed.

I did not even read my complaint, since they were the professionals who knew how to do these things (since I had told them the problem I had with Mr. Gubbay).

I later discovered and understood the full meaning of the facts as described in my complaint, only to realize they were false and that I had been taken advantage of, that my trust had been betrayed. These lawyers had drafted a complaint that wasn't true and not in accordance with what we had agreed upon. THEREFORE I AM REQUESTING THE WITHDRAWAL OF MY COMPLAINT.

SECONDLY.- As far as my complaint is concerned, it is true that I was employed by Mr. Gubbay.

That the amount of 500.000 pesetas that I was owed in commissions have been paid back to me. Therefore I no longer have any further claims.

I have been told by the company that the reason why I had had to wait so long in getting paid was because of administrative reasons. This was mainly due to the fact that most of the documents and archives located on the fourth floor had to be transferred to the second and third floor of the building.

I also wish to state in relation to the staff employed by Mr. Gubbay with the view of performing various duties for the Capital Suisse group of companies that they were offered an outstanding career opportunity through special training with T.C.I (Denver) and I.T.I. (Chicago and New York) in the United States of America.

As a matter of fact I was sent to the United States of America on a six month training course as a trader on the stock exchange with everything paid for by Capital Suisse. My English is well above average.

The amount of 500.000 pesetas that appeared in my contract with "*Swiss Management Corporation LLC*" refers to the account opened by Mr. Gubbay for me so I could trade on the Stock Exchange.

If it is true that my colleagues and I started working as paper traders in the trading department of Capital Suisse. It is absolutely false that we dedicated all of our time doing nothing but that during the three years which lasted my employment. The lawyers of the bank invented this whole story. I never said that we were faking anything whilst being in the office.

It is not true that the employees working on the 4th floor were asked to act as thought they were doing something when

really they weren't doing anything. All of the employees were actively working at performing their respective duties.

Had we been asked to act or do anything that had no meaning I would have had doubts about the legitimacy of the business Capital Suisse was involved in and would have left the company immediately.

During the various meetings held with the lawyers of the bank HH&C they insisted on this specific point, but I would always tell them that we were performing genuine tasks and genuine work. What appears in my complaint in relation to this specific point was included by the lawyers of HH&C.

It is a fact that I was owed both salaries for February and March 2002 and I was led to believe that by suing Mr. Gubbay I was going to get my money considering the fact that my previous attempts through the normal legal channels had failed.

I deeply regret the damage I have caused Mr. Gubbay with this complaint that I am withdrawing in full.

I the light of what I have just stated,

I BEG THIS COURT: That further to this statement my complaint be completely withdrawn from its records.

Trusting that justice will be done. In Marbella (Málaga) on October 21, 2.002.

Exhibit 2

AL TRIBUNAL DE DISTRITO DEL TERCER DISTRITO JUDICIAL EN Y PARA EL CONDADO DE SALT LAKE, ESTADO DE UTAH

Caso Consolidado nº 010905355

Por la presente yo, José Diego Herrera Pérez, economista del Ilustre Colegio de Economistas de Málaga con el nº 2.753, vengo a realizar ante notario las siguientes afirmaciones.

1) Que conozco al Sr. Philippe Gubbay y al grupo de empresas Capital Suisse, especialmente las de nacionalidad española, ar alas que he venido realizando las labores propias de mi profesión de forma independiente.

2) Que tengo constancia de los embargos que sobre las mismas se impusieron tanto a nivel nacional como internacional.

3) Que como consecuencia de ellos se produjo una situación de asfixia econbmica que produjo una faits de liquidez que oblige) a dichas empresas al despido de la grin mayorla de sus trabajadores.

4) Que la reacción de algunos de ellos, at verse imposibilitados por los embargos a la hora de cobrar el importe de sus indemnizaciones por despido, fue la de apropiarse de material de todo tipo pertenecjente a la empresa. Asimismo, otros, retuvieron material y documentación de la empresa, suponemos que en concepto de retención, para no devolverlo si no se les pagaba cuarito se les adeudaba, situación que ha provocado un [ILLEGIBLE] enconado con los trabajadores que aún no ha sido resuelto.

5) Que sé que falta dicha documentación porque me ha sido muy dificil procedcr a realizar los estados contables de dichas empresas españolas debido a su ausencia.

6) Que desconozco quién , exactamente se ha apropiado del material o de los documentos, pero que estos se conservaban junto con la documentación que llegó de las oficinas de Salt Lake City, y que por tanto, es de suponer que también partee de la misina haya podido desaparecer por los mismos motives.

7) Que me consta que ha habido antiguos trabajadores que como acto de despecho se ban unido al banco HH&C en su denuncia contra Capital Suisse, ya que el mencionado banco ofreció asistencia juridica gratuita a los empleados de Capital Suisse si denunciaban los hechos, con la promesa de que de esa forma iban a cobrar más ripidamente,

8) Que según se me explica, no se ha podido proceder contra los posibles supuestos sustractores del material y documentación por la imposibilidad de financiar el numeroso volumen de cases que habria que incoar ante los tribunales.

De todo lo cual doy testimonio en Málaga, a veintitrés de septiembre de 2004.

[SEAL]

TO THE ATTENTION OF THE THIRD DISTRICT COURT
SALT LAKE SALT LAKE COUNTY,
STATE OF UTAH

Case Number n° 010905355

I hereby, Jose Diego Herrera Perez, Chartered Accountant and member of the college of Chartered Accountants of Malaga with the license number n° 2.753, I hereby come and declare the following before a notary:

1) I personally know Mr. Philippe Gubbay and the group of companies Capital Suisse, especially the Spanish entities because I have been performing accounting duties as an independent contractor for these corporations.

2) I know of the existence of the various freezing injunctions that were issued against these entities not only on a national scale but on an international scale.

3) And as a result of these freezing injunctions these companies were strangled financially to the extent that they became illiquid and had to fire most of their employees.

4) That the reaction of some of the workers, realizing that because of these freezing injunction they were not going to be paid their wages, salaries and expenses became violent. They decided to rob furniture, computers and equipment of any type belonging to the group of companies. Whilst others decided to take pieces of equipment, documents of the company, as down payment for the money that was owed, with the intention of not returning anything in the event they were not paid. This fight with the former employees and workers of Capital Suisse to this days still continues.

5) I know that these facts are true because, as accountant for the group, I know that a number of documents have gone missing and as a result of this I have experienced the greatest difficulties in completing financial statements for these companies.

6) That I do not know who exactly took the various assets and documents pertaining to the company. What I do know is that these documents and various items where located in the same premises where the boxes that were once sent from the offices of Salt Lake City remained. As a result of this I am not at all surprised to hear that possibly part of the documents and/or pieces of equipment sent from Salt Lake City could have suffered the same treatment.

7) That former employees of Capital Suisse in order to seek revenge have joined forces with HH&C in its complaint in Spain. The bank offered free legal assistance to anyone that would turn against Capital Suisse with the promise that by doing so they were going to get their money quicker.

8) That it has not been possible to prosecute the wrong doers who took away documents, equipment and various other items because of the financial burden and various problems it would have brought on the failing group should it had chosen to file that many claims.

Of all of this I bare testimony in Malaga on September 23, 2004

José Diego Herrera Pérez

APPENDIX K

LAW OFFICES
HATCH, JAMES & DODGE
A Professional Corporation
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone (801) 363-6363
Fax (801) 363-6666
September 3, 2004

VIA FACSIMILE
(801-521-6280)

Perrin R. Love
CLYDE SNOW SESSIONS & SWENSON
201 South Main Street, Suite 1300
Salt Lake City, Utah 84111

Re: *Hentsch Henchoz & CIE v. Gubbay, Case No. 010905355*

Dear Perrin:

We have received today from Capital Suisse all documents produced in the ordinary course of business in Utah that were removed by Capital Suisse during the course of this litigation. Capital Suisse returned the documents to Utah in order to comply the Utah Supreme Court's recent requirement that Capital Suisse comply with all outstanding orders of the district court. It is our understanding that the district court's March 25, 2002 order requiring the return of these documents is the only outstanding order of the court.

The documents are available for your immediate review. Please contact us if and when you wish to review the documents.

Please do not hesitate to contact me with any question you may have regarding this matter.

Sincerely yours,

/s/ Brent O. Hatch
BRENT O. HATCH

APPENDIX L

LAW OFFICES
HATCH, JAMES & DODGE
A Professional Corporation
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone (801) 363-6363
Fax (801) 363-6666
October 19, 2004

VIA HAND DELIVERY

Perrin R. Love
CLYDE SNOW SESSIONS & SWENSON
201 South Main Street, Suite 1300
Salt Lake City, Utah 84111

Re: *Hentsch Henchoz & CIE v. Gubbay, Case No. 010905355*

Dear Perrin:

As we stated in our telephone conversation with you yesterday, we have received from Capital Suisse copies of its audits and sets of accounts for the years 2000 and 2001. These documents were recently obtained from a disgruntled former employee of Capital Suisse who for an extended period refused to turn the documents over to Capital Suisse. In addition, Capital Suisse recently has located a copy of the hard drive data contained on the computer systems used in its Salt Lake City office. The hard drive data was located at the office of an attorney.

It is our understanding that your client already possesses significant portions of the information and documents your client claims in opposition to Capital Suisse's pending Motion before the trial court. Nevertheless, we have offered these additional materials for your inspection and review. In our telephone conversation of yesterday, you stated that you

have no intention to look at any of these additional documents. Please contact us if and when you change your mind and want to review the documents.

Sincerely yours,

/s/ Brent O. Hatch
BRENT O. HATCH

APPENDIX M

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Consolidated Case No. 010905355

HENTSCH HENCHOZ & CIE,

Plaintiff,

vs.

PHILIPPE DAVID GUBBAY; CAPITAL SUISSE, S.A.; CAPITAL SUISSE SECURITIES, INC.; CAPITAL SUISSE, INC.; ZOOLEY OF UTAH, INC.; FERNLAND LIMITED; DOUGLAS P. HOYT; and JOHN DOES 1-10,

Defendants.

OCTOBER 20, 2004

BEFORE THE HONORABLE ANTHONY B. QUINN
District Court Judge.

HEARING

SALT LAKE CITY, UTAH

WEDNESDAY, OCTOBER 20, 2004, 9:10 A.M.
PROCEEDINGS

[3] THE COURT: HH&C vs. Philippe Gubbay, and if you'd like to state your appearances for the record, please, starting with the plaintiffs.

MR. LOVE: Perrin Love and Walter Romney for HH&C, Your Honor.

MR. HATCH: Your Honor, Brent Hatch and Mark Richards for the defendants.

THE COURT: Thank you. I've had a chance to now read that which has been submitted with respect to this case and, let me tell you, I view my obligation as pretty limited to responding to the three questions that the Supreme Court asked in this case. Those are: whether Capital Suisse has adequately complied with the orders of the District Court within 30 days from the issuance of this decision. Number two, the amount of the unsatisfied portion of the District Court's judgment, and three, whether Capital Suisse has posted an adequate bond in that amount.

It seems to me that these questions, at least some of them, potentially pose fact issues,

* * * *

[5] that since the order was made, there may be documents, computer, hard drives, floppy disks, etc., that have—that disappeared with employees, for various reasons.

So, I guess my initial though is, that is not adequate compliance with the orders of the Court. The fact that it may not now be possible to comply with the Court order does not mean that the order has been adequately complied with.

There doesn't seem—with respect to the second question, there doesn't seem to be any dispute with respect to the amount of a judgment. Plaintiffs have set forth a number of 27 million and change, and I don't read in the documents any—any dispute with respect to that.

The third question of whether Credit Suisse has adequately posted a bond, no bond has been posted, and as I understand the defendants' position, their view is that a bond really isn't required. There's no stay being sought here, and the defen—plaintiffs can go ahead and execute on their judgment, but that isn't what the Supreme Court said. The Supreme Court said that as a condition of not dismissing the appeal, they were requiring posting the bond in the amount of the

* * * *

[34] we've tried to make as to discovery, and as to impossibility on the bond, is something that I should not have to go up without.

THE COURT: Alright, thank you.

MR. HATCH: Thank you very much, Your Honor.

THE COURT: I think I need to put my decision in context. And, that context is, the decision of the Supreme Court which, as I read the opinion, was sorely tempted to simply dismiss the appeal. But, out of a sense that there ought to be one last chance, they fashioned a remedy which gave the defendants 30 days to come into complete compliance. And, I think that my job is simply to focus on the 30 days, and answer the questions as best I can, and that's what I'm going to do.

With respect to question 1, whether the defendants were in full compliance with the court orders, I'm going to find that they weren't. I think that, at a minimum, the discovery orders required supplementation of the interrogatories and requests for production of documents. That—it is undisputed that that did not happen within 30 days. It has, arguably, happened since, but [35] I'm not in a position to determine whether there has been full compliance outside the 30 days. That hasn't been briefed to me. I haven't seen the answers, and I don't know, but I think I can say, with some confidence, since it was done since, that it wasn't done within the 30 days. And, so, that order has not been fully complied with.

With respect to whether other materials were brought back in Salt Lake—brought back to Salt Lake. I have the representation that they were. On the other side, I have the affidavit, and I think his name was Mr. Smith, wasn't it, that originally was—

GENTLEMAN: [inaudible] Smith, Your Honor.

THE COURT: Yeah, was employed by the defendant; who describes what was taken. And, I have the representations of Mr. Love and his group, who have reviewed what has come back, and compared it with the Smith affidavit, and tells me that it's not all there.

There's been some other things that have been sent back to Utah outside the 30 days, but I think that based on that, I can safely find [36] that the order to bring everything back to Salt Lake within 30 days was not complied with, just simply on the basis that in the first go round, there was no hard drives that were brought back, where Mr. Smith clearly states, there were hard drives that were sent out of Utah, originally.

It doesn't seem to me that there's any dispute with respect to the—question 2, which is the unsatisfied portion of the judgment. I find it to be $27,868,098.63.

And, finally, as to whether there's been any bond posted, I find that there hasn't been.

The plaintiffs have proposed an order in this case, which I think is completely appropriate in answering the issues posed by the Supreme Court, and I'm simply going to sign the order. The arguments that you're making, Mr. Hatch, I think are arguments that are better made before the Supreme Court.

Anything else, counsel?

GENTLEMAN: No, Your Honor. Nothing else.

THE COURT: Alright.

GENTLEMAN: Thank you, Your Honor.